

Exhibit No:  
Issues:  
Witness: Suzette Quate  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Southwestern Bell  
Telephone, L.P., d/b/a/  
SBC Missouri  
Case No: TO-2005-0336

SOUTHWESTERN BELL TELEPHONE, L.P.,  
d/b/a SBC MISSOURI

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

SUZETTE QUATE

Dallas, Texas  
May 9, 2005

In the Matter of Southwestern Bell Telephone, L.P., )  
d/b/a SBC Missouri's Petition for Compulsory ) Case No. TO-2005-0336  
Arbitration of Unresolved Issues for a Successor )  
Agreement to the Missouri 271 Agreement ("M2A") )

STATE OF TEXAS )  
COUNTY OF DALLAS

My name is Suzette Quate. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.
- 3 I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

*Suzette Guate*  
Suzette Guate

Subscribed and sworn to before me this 3<sup>rd</sup> day of May, 2005.



Wanda G. Hedner  
Notary Public

My Commission Expires: February 6, 2006

## **TABLE OF CONTENTS**

	<u>Page</u>
I. Introduction.....	1
II. Executive Summary.....	1
III. General Terms and Conditions (GT&C).....	4
A. Non-251 Provisions (AT&T GT&C 1(b), CC <sup>1</sup> GT&C 1, MCIIm GT&C 1, WilTel GT&C 4, Sprint GT&C 1(A), CC GT&C .....	4
B. Implementation of Rate Changes (AT&T GT&C 2, 3 & 7, CC GT&C 15, MCIIm GT&C 10, Pager GT&C 13, Navigator GT&C 16).....	6
C. Assignment (CC GT&C 5, Navigator GT&C 6, Charter GT&C 27, MCIIm GT&C 3, WilTel GT&C 7& 9, AT&T GT&C 4, Sprint GT&C 8, WilTel GT&C 8) .....	11
D. Billing (CC GT&C 7 & 8, Navigator GT&C 9 & 11, Pager GT&C 7, 8 & 9, Charter GT&C 32, 33 & 34, WilTel GT&C 9 & 11, Sprint GT&C 11, 12, 13, MCIIm INV 1, 2, 3 & 4).....	20
E. Dispute Resolution (CC UNE 66, CC GT&C 11 & 19, Charter GT&C 36, WilTel UNE 5(A)).....	37
F. Non-Payment and Procedures for Disconnection (AT&T GT&C 5 & 6, CLEC Coalition GT&C 12, Pager GT&C 10, Navigator GT&C 10 & O&P 2).....	42
G. Deposit (CC GT&C 3, MCIIm GT&C 6, Pager GT&C 3 & 4, Sprint GT&C 10, Charter GT&C 30, Navigator GT&C 4, WilTel GT&C 10).....	47
H. Other GT&C Issues.....	53
1. Term (MCIIm GT&C 4, Pager GT&C 5).....	53
2. Negotiation of Successor Agreement (CC GT&C 4(a), MCIM GT&C 5, Charter GT&C 29).....	53
3. Notice (CC GT&C 14, Pager GT&C 13(B)).....	56
4. Definitions (AT&T Network A-C 1).....	57
5. Insurance (Navigator GT&C 3, WilTel GT&C 6, Charter GT&C 26).....	57
6. Referenced Documents (CC GT&C 18, Pager GT&C 14, B/I GT&C Section 1.7(A), Charter GT&C 21).....	59
7. Affiliates (WilTel GT&C 5, Pager GT&C 6).....	63

---

<sup>1</sup> The CLEC Coalition will be referred to throughout my testimony as “CC” or CLEC Coalition.

## **TABLE OF CONTENTS**

	<u>Page</u>
8. Indemnification and Limitation of Liability (Charter GT&C 40 & 43, WilTel GT&C 12, Collo 3, Navigator GT&C 7, CC GT&C 6, CC E911 9, MCIIm Resale 5).....	63
9. Audit (MCIIm GT&C 8, Charter GT&C 38).....	73
10. Miscellaneous (Navigator GT&C 15, Pager GT&C 15) .....	76
11. CLEC Coalition Specific Issues (CC GT&C 21).....	76
12. Charter Specific Issues (Charter GT&C 22, 23, 41, 42 & 44).....	77
13. MCIIm Specific Issues (MCIIm GT&C 2, 8 & 9).....	80
14. Navigator Specific Issues (Navigator GT&C 5, 8 & 12).....	81
15. Sprint Specific Issues (Sprint GT&C 9).....	83
16. Pager Company Specific Issues (Pager GT&C 12).....	84
I. Resale and Related Attachment/Appendices (CC Retail 7).....	85
J. Unbundled Network Elements (CC UNE 44).....	85

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Suzette Quate. My business address is Four SBC Plaza, Floor 20, Dallas, Texas 75202.

**Q. BY WHOM ARE YOU EMPLOYED?**

A. I am employed by Southwestern Bell Telephone, L.P.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, WORK EXPERIENCE, AND CURRENT JOB RESPONSIBILITIES.**

A. I earned a Bachelor of Communications from the University of Texas at Arlington. I have worked for more than twenty years in the telecommunication industry, gaining experience in network, outside plant engineering, mechanized loop testing, account management and negotiations. I currently hold the position of Associate Director-Regulatory Support in Wholesale Marketing. I am responsible for researching, formulating and communicating the SBC ILECs', including SBC Missouri's, wholesale policy positions to state commissions in regulatory proceedings. The primary responsibilities of the Wholesale Marketing group are to develop and manage wholesale products and services; to support negotiations of local interconnection agreements; to participate in state arbitration proceedings under Section 252 of the Telecommunications Act of 1996 ("1996 Act" or "Act"); and to guide compliance with the Act and state laws.

**Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?**

A. Yes. I have filed testimony before the California, Illinois, Indiana, Kansas, Michigan, Nevada, Ohio, Oklahoma, Texas, and Wisconsin Commissions.

**II. EXECUTIVE SUMMARY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. In this proceeding, the parties are arbitrating a successor interconnection agreement to the M2A. I will explain and support SBC Missouri's positions related to the unresolved

1 issues regarding General Terms and Conditions (GT&C) and Resale. I will demonstrate  
2 that SBC Missouri's proposed contract language is the most appropriate for the issues  
3 presented.

4 Jurisdiction Issues (AT&T GT&C 1(b), CC GT&C 1, MCIIm GT&C 1, WilTel  
5 GT&C 4, Sprint GT&C 1(A), CC GT&C 20). These issues address whether the subject  
6 matter of this proceeding falls outside the scope of the Commission's delegated authority  
7 under the FTA.

8 Implementation of Rate Changes (AT&T GT&C 2, 3 & 7, CC GT&C 15, MCIIm  
9 GT&C 10, Pager GT&C 13, Navigator GT&C 16). These issues address what provisions  
10 are appropriate when a CLEC orders a product or service for which there are no rates (or  
11 the rate is blank, a dash, or TBD), terms or conditions in the agreement and when the  
12 rates should be effective. Also addressed is whether CLECs should be able to order the  
13 same products/services from its agreement or SBC Missouri's tariff and when a tariff rate  
14 is incorporated into the Agreement by reference, should SBC be allowed to charge the  
15 most current tariffed rate.

16 Assignment Issues (CC GT&C 5, Navigator GT&C 6, Charter GT&C 27, MCIIm  
17 GT&C 3, WilTel GT&C 7 & 9, AT&T GT&C 4, Sprint GT&C 8, WilTel GT&C 8).  
18 These issues generally involve the process that must be undertaken when a CLEC  
19 changes its name or merges with another company. In many cases, there are costs  
20 incurred by SBC to accommodate the assignment, and in such instances, it is only fair  
21 that the CLEC be responsible for all such cost. These may include changing  
22 OCN/ACNA codes, which must be changed to ensure SBC Missouri's systems are  
23 updated and allow ordering and billing. It is also important for a CLEC acquiring another

1 CLEC to be fully responsible for the charges owed to SBC by the acquired CLEC.

2 Billing/Escrow/Deposit Issues (CC GT&C 7 & 8, Navigator GT&C 9 & 11, Pager  
3 GT&C 7, 8 & 9, Charter GT&C 32, 33 & 34, WilTel GT&C 9 & 11, Sprint GT&C 11,  
4 12, 13, MCIIm INV 1, 2, 3 & 4, CC GT&C 3, MCIIm GT&C 6, Pager GT&C 3 & 4,  
5 Sprint GT&C 10, Charter GT&C 30, Navigator GT&C 4, WilTel GT&C 10). As to these  
6 issues, SBC has proposed language that will protect it from the significant risk incurred  
7 in providing services to CLECs on “credit,” which is the arrangement for all carriers  
8 since they are billed after services are provided. A few points are as follows:

- 9 • SBC has lost approx. \$255M over past 4 years from CLECs who failed  
10 to pay bills. It is simply not reasonable for SBC to assume this kind of  
11 risk. The CLEC’s various proposals simply shift all of the risk onto  
12 SBC. To protect itself from this risk, SBC proposes two methods,  
13 deposits and escrow provisions, to help minimize this risk.
- 14 • Deposits are commonly used in the telecommunications business.
- 15 • Escrows are utilized to hold moneys in dispute and are common in  
16 ICAs, and are certainly common in SBC ICAs.

17 Dispute Resolution (CC UNE 66, CC GT&C 11 & 19, Charter GT&C 36, WilTel  
18 UNE 5(A)). These issues deal with the process involved in resolving disputes. It is in  
19 the best interest of all parties to this proceeding to establish a uniform dispute resolution  
20 process that allows for the complete and timely resolution to the issues. SBC Missouri  
21 strives to resolve disputes in 30 days, but for SBC to accomplish this, it must receive the

appropriate documentation needed to investigate the dispute.

Non-Payment and Procedures for Disconnection (AT&T GT&C 5 & 6, CLEC Coalition GT&C 12, Pager GT&C 10, Navigator GT&C 10 & O&P 2). These issues address the appropriate procedures for disconnection. The CLECs inappropriately seek to lengthen the disconnection timeline. Again, SBC Missouri's language seeks to protect it from the significant risk incurred in providing services.

Other issues for the Commission's consideration are: Term (MCIm GT&C 4, Pager GT&C 5); Negotiation of Successor Agreement (CC GT&C 4(a), MCIm GT&C 5, Charter GT&C 29); Notice (CC GT&C 14, Pager GT&C 13(B)); Definitions (AT&T Network A-C 1); Insurance (Navigator GT&C 3, WilTel GT&C 6, Charter GT&C 26); Referenced Documents (CC GT&C 18, Pager GT&C 14, B/I GT&C Section 1.7(A), Charter GT&C 21); Affiliates (WilTel GT&C 5, Pager GT&C 6); Indemnification and Limitation of Liability (Charter GT&C 40 & 43, WilTel GT&C 12, Collo 3, Navigator GT&C 7, CC GT&C 6, CC E911 9, MCIm Resale 5); Audit (MCIm GT&C 8, Charter GT&C 38); Miscellaneous (Navigator GT&C 15, Pager GT&C 15); CLEC Coalition Specific Issues (CC GT&C 21).

### **III. GENERAL TERMS AND CONDITIONS (GT&C)**

#### **A. [NON-251 PROVISIONS: (AT&T GT&C 1(b), CLEC Coalition GT&C 1, WilTel GT&C 4, SPRINT GT&C 1, CLEC Coalition GT&C 20)]**

##### **AT&T GT&C Issue 1(b), CLEC Coalition GT&C Issue 1, WilTel GT&C Issue 4**

**Issue Statement:** *(b) Does the Commission have jurisdiction to arbitrate language which pertains to Section 271 and 272 of the Act and which was not voluntarily negotiated and does not address a 251(b) or (c) obligation?*

##### **SPRINT GT&C 1(a)**

**Issue Statement:** *(a) Should this Interconnection Agreement contain language that goes beyond SBC's obligation to provide 251/252 services?*



1  
2 **Q. PLEASE DESCRIBE ISSUE 1(b).**

3 A. The CLECs have proposed language stating that the parties' interconnection agreement  
4 ("ICA" or "Agreement") sets forth SBC Missouri's obligations pursuant to Section 271  
5 of the 1996 Act. SBC Missouri objects to the CLEC's proposed language.

6 **Q. WHAT IS THE BASIS FOR SBC MISSOURI'S OBJECTION?**

7 A. While this will be addressed in more detail in SBC Missouri's legal briefs, I will briefly  
8 set forth SBC Missouri's position here so that the arbitrator and CLECs will be clear on  
9 what it is. Essentially, SBC Missouri's position is simply that an interconnection  
10 agreement that parties make under Sections 251 and 252 of the 1996 Act need not reflect  
11 those obligations (if any) that Section 271 of the 1996 Act imposes on Regional Bell  
12 Operating Companies, and that Section 252 of the 1996 Act, which empowers state  
13 commissions to arbitrate interconnection agreements, does not authorize state  
14 commissions to impose any Section 271 duties when they act in that capacity.

15 **Q. PLEASE ELABORATE.**

16 A. Section 251(c)(1) of the 1996 Act identifies those matters that incumbent carriers are  
17 obliged to negotiate with requesting carriers which seek an interconnection agreement,  
18 and it is only open issues arising out of the negotiation over those matters that Congress  
19 made subject to arbitration under the 1996 Act. Those matters are, in the words of  
20 Section 251(c)(1), the "terms and conditions of agreements to fulfill the duties described  
21 in paragraphs (1) through (5) of subsection (b) and this subsection" – in other words, the  
22 duties set forth in 251(b) and 251(c). For present purposes, the key point is that Section  
23 251(c)(1) does not require incumbent LECs to negotiate terms and conditions to fulfill  
24 any requirements under Section 271, and Section 252(b), therefore, does not authorize

1 state commissions to resolve issues having to do with Section 271 when they are  
2 arbitrating interconnection agreements.

3 **CLEC COALITION GT&C Issue 20**

4 **Issue Statement:** *Should CLEC language be in the agreement?*  
5

6 **Q. WHAT IS THE DISPUTE WITH REGARD TO THE ABOVE ISSUES?**

7 A. The CLEC Coalition has proposed language throughout the agreement that imposes  
8 obligations on SBC Missouri that are outside the scope of a 251 agreement. For all of the  
9 reasons discussed above, the CLEC Coalition's proposed language is inappropriate. This  
10 issue will be discussed further in SBC Missouri's brief to the Commission.

11 **B. [IMPLEMENTATION OF RATE CHANGES: (AT&T GT&C 2, 3, and 7, CLEC Coalition**  
12 **GT&C 15, MCIIm GT&C 10, PAGER Company GT&C 13, NAVIGATOR GT&C 16)]**  
13

14 **AT&T GT&C Issue 2**

15 **Issue Statement:** *(a) If AT&T orders a product or service for which there are no*  
16 *rates, terms and conditions in this agreement, should AT&T pay*  
17 *for the product or service at the rates set forth in SBC's intrastate*  
18 *tariff or if no tariff applies then SBC's current generic contract*  
19 *rate?*  
20

21 **Q. HOW SHOULD AN INADVERTENT OMISSION OF PROVISIONS FOR**  
22 **PRODUCTS, SERVICES, OR RATES BE ADDRESSED?**

23 A. SBC Missouri proposes language to address what happens if the ICA does not contain  
24 rates, terms, and conditions for a product ordered by AT&T. While the parties to the ICA  
25 intend that it should contain rates, terms, and conditions for all the products and services  
26 at issue, an omission can inadvertently occur. When AT&T elects to buy something for  
27 which there are not rates, terms or conditions for the product in the agreement, it should  
28 amend the agreement. To the extent a CLEC may wish to operate under applicable rates,  
29 terms, and conditions ("provisions") set forth in an effective Missouri tariff, then the  
30 Parties may agree to incorporate the relevant provisions of the tariff by reference into  
31 their ICA, as such tariff may be modified from time to time. However, if no tariff

1 applies, the agreement should be amended to reflect the rates, terms and conditions found  
2 in SBC Missouri's current generic contract. It is SBC Missouri's position that an ICA is a  
3 binding contract which generally sets forth all of the provisions under which the Parties  
4 have agreed to operate in that state.

5 **CLEC Coalition GT&C Issue 15**

6 **Issue Statement:** *When purchasing from the tariffs, should SBC Missouri be allowed*  
7 *to charge the CLEC the most current tariff rate?*  
8

9 **PAGER Company GT&C Issue 13**

10 **Issue Statement:** *When purchasing from the tariffs, should SBC be allowed to*  
11 *charge the CLEC the most current tariff rate? Should*  
12 *notification to CLEC of filing be required?*  
13

14 **Q. WHAT IS THE DISPUTE WITH REGARD TO TARIFF REFERENCES?**

15 A. SBC Missouri has proposed language that makes clear that any changes to a tariff  
16 provision or rate are automatically incorporated into the agreement. The CLEC  
17 Coalition and Pager Company disagree. As stated above, to the extent a CLEC  
18 may wish to operate under applicable rates, terms and conditions ("provisions")  
19 set forth in an effective Missouri tariff, then the agreement should incorporate the  
20 relevant provisions of the tariff by reference into their ICA, as such tariff may be  
21 modified from time to time. The CLEC Coalition would have the agreement  
22 remain silent. The Pager Company has proposed language that would require  
23 SBC Missouri to continue to provide a product or service obtained via the tariff  
24 even if the tariff became ineffective by operation of law through deregulation or  
25 otherwise. Pager's proposed language is inappropriate and unreasonable.

26 **Q. WHAT TYPE OF NOTICE OF TARIFF FILINGS SHOULD SBC**  
27 **MISSOURI BE REQUIRED TO PROVIDE TO THE CLECS?**

28 A. SBC Missouri should not be required to provide advance notice of its tariff filings. SBC  
29 Missouri files its tariff electronically in the Commission's Electronic Filing Information

1 System (EFIS”). All CLECs have access to EFIS and can monitor SBC Missouri’s tariff  
2 filings and may file a motion to suspend any tariff that SBC Missouri files. The Pager  
3 Company proposes in its Section 37.4 that SBC Missouri provide 30 days advance notice  
4 before the tariff filing date of new products and services that are available for resale.  
5 Since SBC Missouri files its tariff with the Commission, 30 days notification to the Pager  
6 Company is inappropriate and unreasonable. The Pager Company’s proposed language is  
7 designed to impede SBC Missouri’s ability to respond to a changing marketplace in a  
8 timely manner. SBC should not be contractually required to provide advance notice to all  
9 other providers of its retail marketing initiatives. Obviously, this is not fair to the  
10 competitive process or to end users. Additional notification to CLECs would be  
11 unnecessarily burdensome and expensive. Thus, the Commission should rule that SBC  
12 Missouri's interconnection agreements do not require advance notice of tariff filings.

13 **AT&T GT&C 3**

14 **Issue Statement:**

15 *If AT&T orders a product or service for which there are terms and*  
16 *conditions in this agreement but no rate, the rate is blank, the rate*  
17 *is a dash, or the rate is TBD, when a rate is established by SBC*  
18 *Missouri and included in SBC Missouri’s current state-specific*  
19 *generic pricing schedule, should such rate apply to such product*  
20 *or service retroactively back to the effective date of the agreement?*

21 **Q. HOW SHOULD A RATE FOR PRODUCTS OR SERVICES NOTED WITH NO**  
22 **RATE, THE RATE IS A DASH, OR THE RATE IS SHOWN AS “TBD” IN THE**  
23 **PRICING SCHEDULE BE ADDRESSED?**

24 **A.** As stated above, while the parties to the agreement fully intend to incorporate appropriate  
25 rates in the agreement, there are occasions when SBC Missouri offers a service for which  
26 a rate has not been determined or a rate has inadvertently been omitted. SBC Missouri  
27 proposes language to address these circumstances.

28 SBC Missouri’s proposed language provides that once a rate is established for a  
29 product or service that is reflected as TBD (i.e., to be determined) in the rate schedule or

1 the rate is blank in the rate schedule, the agreement should be amended to reflect such  
2 rate and be applied retroactively to the effective date of the agreement. After all, it is  
3 only reasonable that, to the extent the CLEC has availed itself of the product or service  
4 prior to the rate being established, it should pay for it.

5 AT&T seeks the ability to order interconnection, UNE, resale or collocation  
6 products or services even when there are no rates provided in the agreement. AT&T  
7 would have the agreement remain silent on the issue of rates that are blank or marked  
8 “TBD” and instead point to language that only addresses negotiating compensation.  
9 AT&T’s language is inappropriate, does not address what rates should apply when rates  
10 are blank or “TBD,” and will lead to disputes. Indeed, SBC Missouri has had to respond  
11 to CLECs’ claim that they are not required to pay for services provided by SBC Missouri,  
12 because the product was not included in the rate table. This language is necessary to  
13 protect SBC Missouri where a rate is TBD or blank and allows the parties to amend the  
14 agreement to include such rate. The Commission should adopt SBC Missouri’s proposed  
15 language which anticipates and addresses this type of situation.

16 **AT&T GT&C Issue 7**

17 **Issue Statement:** *If AT&T orders a product from a SBC Missouri’s tariff, must it*  
18 *amend its agreement to remove the rates, terms and conditions*  
19 *associated with the product it is ordering from the tariff?*  
20

21 **MCIIm GT&C Issue 10**

22 **Issue Statement:** *Should MCI be permitted to purchase the same service from*  
23 *either an approved tariff or the interconnection agreement?*  
24

25 **Q. WHAT IS THE DISPUTE WITH REGARD TO PURCHASING FROM THE**  
26 **TARIFF?**

27 **A.** Both AT&T and MCIIm have proposed language that improperly allows them to pick and  
28 choose among the most favorable terms of this Agreement or of SBC Missouri’s tariff,  
29 when they choose to purchase a service from a tariff.

1 **Q. WHY HAS SBC MISSOURI PROPOSED LANGUAGE STATING THAT IF A**  
2 **CLEC WANTS TO PURCHASE A SERVICE UNDER THE TARIFF RATHER**  
3 **THAN THE INTERCONNECTION AGREEMENT, IT MUST FIRST AMEND**  
4 **ITS AGREEMENT?**

5 A. An Interconnection Agreement is a binding contract that generally sets forth all the  
6 provisions under which the parties to the agreement have agreed to operate. Accordingly,  
7 if a CLEC's Agreement contains rates, terms, and conditions for a product or service,  
8 then the item should be ordered under the Agreement. If the parties agree to look to a  
9 tariff, then the agreement can say that. This policy avoids confusion and disputes by  
10 making it absolutely clear what the parties' intent is with regard to the terms and  
11 conditions for a product or service. Historically, the SBC companies have experienced a  
12 great deal of confusion when CLEC customers unilaterally decide to order products and  
13 services from tariffs when they are also covered by Interconnection Agreement terms and  
14 conditions. Later, the parties find themselves disagreeing over what the appropriate  
15 terms, conditions, and rates were supposed to be, and may have to bring their  
16 disagreement before an arbitrator or state commissions for resolution. SBC Missouri has  
17 agreed that there are circumstances in which a CLEC may order from the tariff; all SBC  
18 Missouri requests is that the CLEC amend its agreement to delete from the ICA the terms  
19 and conditions associated with the product it is ordering out of the tariff and utilize the  
20 terms and conditions that are in the tariff.

21 **Q. IS THERE ANOTHER REASON TO AMEND THE AGREEMENT WHEN A**  
22 **CLEC WANTS TO PURCHASE A SERVICE UNDER THE TARIFF RATHER**  
23 **THAN THE INTERCONNECTION AGREEMENT?**

24 A. Yes. SBC does not have separate USOCs for the same product when offered both under  
25 tariff and under ICA. SBC has one USOC per product and the USOC generally defaults  
26 to a tariff price (if it exists). When SBC and a CLEC have an ICA that includes a  
27

product, SBC creates a CLEC-specific table that sets forth the ICA price for that product, which effectively overrides the tariff price. SBC's billing systems can not bill for the same product to the same CLEC at two different rates at the same time.

**NAVIGATOR GT&C Issue 16**

**Issue Statement:** *Which party's provisions regarding amendments, modifications should be incorporated into the party's agreement?*

**Q. WHAT IS THE NATURE OF THIS DISPUTE?**

A. Navigator and SBC Missouri have agreed to language that an amendment becomes effective upon approval of the amendment by the Commission. However, SBC Missouri has proposed language that the amendment will not require refunds, true-up, or retroactive crediting or debiting prior to the approval of the Amendment. Navigator disagrees.

**Q. WHY IS SBC MISSOURI'S PROPOSED LANGAUGE APPROPRIATE?**

A. SBC Missouri's language makes clear that the rates and conditions of the amendment are to be applied prospectively once the Commission approves the amendment. Furthermore, if a rate has been available for some time, Navigator may not choose to avail itself of the rate until much later. SBC Missouri should not have to incur the expense and burden of retroactive true-ups because of a decision by Navigator to delay in requesting the rate.

C. [ASSIGNMENT: (CLEC Coalition GT&C 5, NAVIGATOR GT&C 6, CHARTER GT&C 27, MCIIm GT&C 3, WiTel GT&C 7 and 9, AT&T GT&C 4, SPRINT GT&C 8 , WiTel GT&C 8)]

**CHARTER GT&C Issue 27(A)**

**Issue Statement:** *What are the appropriate terms and conditions regarding restriction on the assignment of the agreement?*

**CLEC Coalition GT&C Issue 5, NAVIGATOR GT&C Issue 6**

**Issue Statement:** *Should SBC Missouri be responsible for the cost associated with changing their records in SBC Missouri's systems when*

CLECs enter into an assignment, transfer, merger or any other corporate change?

**CHARTER GT&C Issue 27(B)**

**Issue Statement:** *Should SBC Missouri be allowed to recover reasonable costs from Charter in the event that Charter requests changes in its corporate name, its OCN or ACNA, or makes any other disposition of its assets, or its end users and/or makes any other changes in its corporate operations?*

**MCIm GT&C Issue 3**

**Issue Statement:** *Should the general terms and conditions contain a cost recovery clause in the event of a change in either party's OCN or ACNA?*

**WilTel GT&C Issue 7**

**Issue Statement:** *Is it appropriate to charge for record order charges, or other fees for where the CLEC name is changing if there is no OCN/ACNA change?*

**Q. SHOULD THE CLEC PAY THE COSTS ASSOCIATED WITH ANY CHANGE OF ITS OCN, ACNA, OR OTHER COMPANY IDENTIFIER?**

A. Yes. Any merger, acquisition, assignment, or change of company name, including OCN/ACNA (Operating Company Number/Access Carrier Name Abbreviation), is the CLEC's business decision, and the CLEC should be accountable for any costs associated with its unilateral business decision. To implement an OCN/ACNA change for a CLEC, SBC Missouri must, at the CLEC's direction, update the accounts of each of the CLEC's end users in the SBC Missouri databases to reflect the correct company name, OCN/ACNA, or other CLEC company identifier.

ACNAs and OCNs are assigned by industry agencies such as Telcordia and NECA (National Exchange Carriers Association). They appear on each end user account or circuit. These codes are used throughout the industry to ensure accurate provisioning and billing. SBC Missouri uses ACNAs and OCNs in its directory databases, network databases (Loop Maintenance Operations System (LMOS), Trunk Integrated Record



1 Keeping System (TIRKS), Network Operations Center (NOC), Recent Change  
2 Administration Center (RCMAC), etc.), and billing systems to identify, inventory, and  
3 appropriately bill and provision the services requested on each service order. It is also  
4 important to recognize that company codes are not used solely by SBC Missouri, but are  
5 also used throughout the industry in databases such as the Local Exchange Routing  
6 Guidelines (LERG), which allows the industry as a whole to properly bill routed calls  
7 (terminating and originating). All appropriate databases and downstream systems must  
8 be updated any time there is a change to a company code, whether it is the OCN and/or  
9 ACNA.

10 For all of the reasons above, it is appropriate for the CLEC to bear the costs it  
11 causes due to its unilateral decision.

12 **Q. WHY IS IT REASONABLE FOR THE CLEC TO PAY A SERVICE ORDER**  
13 **CHARGE WHEN IT CHANGES A COMPANY IDENTIFIER?**

14 A. SBC Missouri has conducted a process review to determine the appropriate process for  
15 implementing record changes. The review identified the appropriate charges for which  
16 each party should be responsible. For example, a service order is required to initiate the  
17 work necessary to change a company identifier in multiple SBC ordering, provisioning,  
18 and billing systems. It is for that reason a service order charge is appropriate. When a  
19 CLEC changes its OCN/ACNA, the OCN/ACNA designation must be changed in every  
20 system for each end user account with which it is associated. This is clearly labor  
21 intensive and requires service order activity on each and every end user account or  
22 circuit. This is necessary because when a service order is issued, it gets distributed to the  
23 downstream systems at which time the systems extract various entries from the service  
24 order necessary to provision, maintain, and bill the service. The company codes are one

1 of the entries the systems pulls from the service order. The systems use the company  
2 codes to identify ownership of the individual end user account or circuit. Since the  
3 records are maintained at the individual end user account or circuit level, the only way to  
4 feed data to the systems is via a service order.

5 Unfortunately, it is a fact that many CLECs are buying and selling assets without  
6 having accurate records of the assets being bought or sold. Since SBC Missouri is not a  
7 party to the assignment and is unaware of what assets, such as end user accounts, circuits,  
8 collocation spaces or other facilities, have been acquired, SBC Missouri does not have  
9 the necessary information to accurately effectuate the assignment. The Commission  
10 should require the CLEC to issue its own service orders just as the New York Public  
11 Service Commission did in the *New York Mass Migration Guidelines*.<sup>2</sup> Further, if SBC  
12 Missouri issued the service orders, instead of the CLEC, SBC Missouri would risk  
13 violating both the FCC's and the Commission's slamming rules.

14 Service order charges, in addition to charges for changes to branding, recording,  
15 engineering and re-stenciling to collocation cages, and other existing charges are  
16 applicable because it was the CLEC's business decision to make the change and,  
17 therefore, should be the responsibility of the CLEC. SBC Missouri is responsible for all  
18 OSS updates and charges, as well as project management.

19 **Q. HAS SBC ALLOWED FOR ONE FREE CLEC CHANGE PER YEAR AND IF SO,**  
20 **WHY DOES SBC MISSOURI NO LONGER ALLOW A FREE CHANGE PER**  
21 **YEAR?**

22 **A.** In the first several years of offering local exchange service as a wholesale product, SBC  
23 Missouri charged a flat fee for changing records in SBC Missouri's databases and  
24 systems when a CLEC changed its name and/or company code (OCN or ACNA)

1 regardless of the size of the embedded base or the service type (e.g. resale, UNE-P, UNE-  
2 L). Each CLEC change, regardless of type, was managed as a project. Many steps are  
3 required to prepare a project plan to change or “convert” the accounts to the new CLEC  
4 name and/or company code. The flat fee was charged for project managing the CLEC  
5 Change. Since then, SBC Missouri has conducted a process review to determine the  
6 appropriate process for implementing record changes. During the process review, SBC  
7 Missouri waived charges for one CLEC change per year, but reserved the right to  
8 negotiate such charges in the future. The review identified the appropriate charges for  
9 which each party should be responsible. Service order charges, in addition to charges for  
10 changes to branding, recording, engineering and re-stenciling to collocation cages, and  
11 other existing charges are applicable because it was the CLEC’s business decision to  
12 make the change and, therefore, should be the responsibility of the CLEC. SBC Missouri  
13 would be responsible for all OSS updates and charges, as well as project management.

14 **CHARTER GT&C Issue 27(A), WilTel GT&C Issue 9**

15 **Issue Statement:** *What are the appropriate terms and conditions regarding*  
16 *restriction on the assignment of the agreement?*  
17

18 **Q. WHAT IS THE DISPUTE WITH REGARD TO CHARTER GT&C ISSUE 27(A)?**

19 A. Issue 27(a) encompasses several disputes. First, SBC proposes language that Charter  
20 may not assign the agreement without prior written consent of SBC. SBC agrees that  
21 consent should not be unreasonably withheld. Charter disagrees. Second, Charter and  
22 SBC disagree as to the payment of charges prior to the assignment of the agreement.  
23 Third, SBC has proposed language that would prevent a CLEC from assigning the  
24 agreement to its affiliate if that affiliate is a party to a separate ICA. Fourth, SBC

---

<sup>2</sup> See <http://www.dps.state.ny.us/00C0188.html>

proposes language that would allow for an additional deposit if warranted. Finally, SBC and Charter disagree as to whether the assignment provisions should be reciprocal.

**Q. WHEN CONSIDERING AN ASSIGNMENT OF ITS AGREEMENT, SHOULD CHARTER BE REQUIRED TO OBTAIN PRIOR WRITTEN CONSENT FROM SBC MISSOURI?**

A. If Charter is involved in the transfer or acquisition of assets provisioned under its ICA, SBC Missouri must review the assignment to confirm that the CLEC is certified as a telecommunications provider, resolve outstanding accounts, determine if a deposit is warranted going forward, amend the agreement to reflect the new name and/or OCN/ACNA change, and to modify the affected records. For example, if Charter assigned the agreement to a third party that is not certified to provide Local Exchange Telecommunication Services in the State of Missouri, the assignment would require SBC Missouri to provide interconnection, UNEs, etc. pursuant to Section 251(b) and (c) to an entity that is not a telecommunication provider. This is contrary to the Act.

Ultimately, Charter, SBC Missouri, and the end-users will benefit from the parties working together to resolve any problems with the assignment prior to a cut-over.

**Q. IS IT APPROPRIATE FOR SBC TO LINK ITS CONSENT TO AN ASSIGNMENT TO CHARTER'S CURE OF ANY OUTSTANDING CHARGES OWED UNDER THE AGREEMENT?**

A. Yes, of course. The charges SBC Missouri would be asking Charter to pay are amounts that Charter acknowledges it owes SBC Missouri with any Disputed Amounts to be placed into an escrow account. After all, the proposed assignment may in some circumstances, alter Charter's ability to pay. SBC Missouri's language is reasonable and provides clarity to the assignment provision.

**Q. WHY SHOULDN'T CHARTER BE ALLOWED TO ASSIGN ITS AGREEMENT TO AN AFFILIATE?**

1 A. SBC Missouri uses OCN and ACNA information to ensure that it provisions and bills its  
2 various offerings in accordance with the provisions of the parties' interconnection  
3 agreement. As a result, it is extremely important to ensure that carriers, which are *not* a  
4 party to the interconnection agreement between SBC Missouri and Charter and *do not*  
5 share an OCN or ACNA with Charter are prohibited from placing orders under the ICA.  
6 Charter's proposed language would allow an affiliated carrier that is not a party to the  
7 interconnection agreement to share an OCN or ACNA with Charter, which is not an  
8 acceptable arrangement because of the problems it poses for billing and provisioning.

9 **Q. SHOULD SBC MISSOURI BE ALLOWED TO REQUIRE AN ADDITIONAL**  
10 **DEPOSIT?**

11 A. Yes, based on the same deposit criteria discussed elsewhere in this testimony. It is  
12 reasonable that upon review of the acquiring CLEC's credit, SBC Missouri may find it  
13 necessary to require a deposit in order to protect itself.

14 **AT&T GT&C Issue 4a**

15 **Issue Statement:** *(a) Should the assignment provision be reciprocal?*  
16

17 **Q. WHAT IS THE DISPUTE WITH REGARD TO MAKING THE ASSIGNMENT**  
18 **RECIPROCAL?**

19 A. SBC Missouri's proposed language recognizes that SBC Missouri, as the incumbent, is  
20 subject to greater regulatory scrutiny while CLECs can avoid or minimize such scrutiny  
21 and assign an agreement in a relatively short time frame. Charter and AT&T disagree.

22 **Q. SHOULD THE ASSIGNMENT PROVISIONS APPLY IN THE SAME WAY TO**  
23 **SBC MISSOURI?**

24 A. No. Both Charter and AT&T's proposed language seek to make the obligations  
25 associated with assignment mutual. This is not appropriate. ILECs in Missouri, such as  
26 SBC Missouri, would be subject to extensive regulatory scrutiny before it could engage  
27 in a merger or other transaction that would entail an assignment of its ICA with a CLEC.

1 Therefore, Charter and AT&T will be sufficiently protected in the event there is an  
2 assignment of the agreement or merger. State regulatory commissions in other states  
3 have recognized this significant difference between ILECs and CLECs. For example, the  
4 Illinois Commerce Commission acknowledged that the assignment obligations should not  
5 be mutual because for an ILEC: “any transfer or assignment to another company would  
6 involve close scrutiny by many regulatory bodies before it took effect. However, a  
7 CLEC transfer could occur in a short time and compel the ILEC to do business on terms  
8 which it normally would not accept.”<sup>3</sup> Further, the CLEC proposal that SBC Missouri  
9 must gain approval from every CLEC with which it has an agreement would be  
10 impossible, or, at the very least, impractical to accomplish.

11 **SPRINT GT&C Issue 8**

12 **Issue Statement:** *Should either party be obligated to notify the other if they sell,*  
13 *assign, or transfer their assets to a person other than an affiliate*  
14 *or subsidiary?*

15  
16 **Q. WHAT IS SBC MISSOURI’S POSITION WITH REGARD TO SPRINT GT&C 8?**

17 **A.** SBC Missouri does not agree that it should be required to provide “special notice” to  
18 CLECs prior to the sale or assignment of contracts. Any merger of SBC will receive  
19 wide-spread news media coverage. Sprint’s proposed language places a burden and  
20 expense on SBC that is unnecessary.

21 **WilTel GT&C Issue 8**

22 **Issue Statement:** *(A) Can SBC require advanced written notice and consent of an*  
23 *assignment associated with a CLEC company code change?*  
24 *(B) Is it appropriate for SBC to link its consent to an assignment to*  
25 *CLEC’s cure of any outstanding, undisputed charges owed under*  
26 *the agreement and any outstanding, undisputed charges associated*  
27 *with the ‘assets’ subject to the clec company code change and can*

---

<sup>3</sup> See Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Level 3 Communications, LLC and Illinois Bell Telephone Company d/b/a Ameritech Illinois; August 30, 2000; Docket No. 00-0332, p. 20.

1                    *SBC require the CLEC to tender additional assurances of*  
2                    *payment?*  
3

4    **Q.    WHY IS 90 DAYS ADVANCE WRITTEN NOTICE NECESSARY?**

5    A.    If WilTel is involved in the transfer or acquisition of assets provisioned under its ICA, it  
6           will know about that transfer or acquisition far enough in advance to provide SBC  
7           Missouri with ninety calendar days advance written notice for an assignment of  
8           OCN/ACNA. SBC Missouri simply needs enough advance notice to resolve outstanding  
9           accounts, determine if a deposit is warranted going forward, amend the agreement to  
10          reflect the new name and/or OCN/ACNA change, and to modify the affected records.  
11          Ultimately, WilTel, SBC Missouri and the end-users will benefit from the parties  
12          working together to resolve any problems with the assignment prior to a cut-over. Ninety  
13          calendar days advanced written notice allows sufficient time for the parties to meet,  
14          determine what steps need to be taken and accomplish the tasks necessary to facilitate a  
15          smooth transition.

16   **Q.    SHOULD SBC MISSOURI BE ALLOWED TO REQUIRE PAYMENT OF**  
17   **OUTSTANDING UNDISPUTED CHARGES PRIOR TO CONSENTING TO AN**  
18   **ASSIGNMENT OF THE AGREEMENT?**

19   A.    Of course. The charges SBC Missouri would be asking WilTel to pay are undisputed  
20          charges – amounts that WilTel acknowledges it owes SBC Missouri and that the  
21          proposed assignment may in some circumstances alter WilTel's ability to pay. It is hard  
22          to imagine a rational basis for WilTel's objection. The fact of the matter is that if WilTel  
23          indisputably owes SBC money, there is nothing at all wrong with SBC insisting that  
24          WilTel pay the amount owed as a condition of SBC's consent to WilTel's request – and  
25          all the more so when the request is for something, an assignment of assets, that could  
26          impair WilTel's ability to pay that debt.

1 **D. [BILLING: (CLEC Coalition GT&C 7 & 8, NAVIGATOR GT&C 9 & 11, PAGER**  
2 **Company GT&C 7, 8 & 9, CHARTER GT&C 32, 33, & 34, WilTel GT&C 11, SPRINT**  
3 **GT&C 11, 12, & 13, MCIIm INV 1, 2, 3, & 4]**

4  
5 **CLEC Coalition GT&C Issue 7**

6 **Issue Statement:** *(a) Should CLECs be allowed to extend the standard universally*  
7 *accepted interval to pay invoices and bills from 30 days to 45*  
8 *days?*

9 *(b) Should the due date run from the time a bill/invoice is*  
10 *sent or the time that it is received?*  
11

12 **PAGER Company GT&C Issue 7**

13 **Issue Statement:** *Should CLECs have 45 days to pay invoices/bills?*  
14

15 **Q. WHAT IS THE DISPUTE WITH THIS ISSUE?**

16 **A.** This issue involves two disputes. First, the parties dispute whether the due date for  
17 payment of bills should be calculated from the date the bill is sent or the date the bill is  
18 received. Second, the parties dispute how bills should be paid. SBC Missouri proposes  
19 one uniform time frame for all parties. SBC Missouri opposes the CLECs' proposed  
20 language because it has the effect of creating a different due date for every bill sent to  
21 every CLEC. Such a scenario would be extremely difficult for SBC Missouri to  
22 administer and would provide opportunity for CLECs to game the system to avoid paying  
23 their bills. In the current climate of economic uncertainty in the telecommunications  
24 industry, the Commission should seek to eliminate opportunities for gamesmanship and  
25 establish processes that lead to increased efficiency.

26 **Q. IS AN UNDERSTANDING OF HOW SBC MISSOURI'S BILLING SYSTEMS**  
27 **WORK HELPFUL?**

28 **A.** Yes, most certainly. SBC Missouri uses very large, complex computer systems and  
29 databases that use software programs to extract and compose billing information into a  
30 bill for the CLEC. The systems compile the data, prepare the bill in the media format  
31 that the CLEC has requested, and package the media for distribution to the CLEC. This  
32 process is known as running a monthly billing cycle. There are several different billing



1 systems used to run all of the bills submitted to CLECs, such as the Customer Record  
2 Information System (“CRIS”) and Carrier Access Billing System (“CABS”). CLECs  
3 receive numerous bills on a monthly basis, relating to the specific products and services  
4 ordered, and the respective billing system produces the bills for those products and  
5 services.

6 The billing systems calculate the bill date for a bill, which is established when the  
7 consolidated billing account (CBA) or billing account number (BAN) is created. The bill  
8 cycle remains the same from month to month. If the Commission were to determine that  
9 a specific CLEC, or multiple CLECs, could have a longer billing review period (resulting  
10 in a payment due date of more than 30 days), it would require an enormous amount of  
11 time and money for programmers to write programs to change the handling of the bills  
12 for each CLEC. Thus, uniformity is extremely important, as it will promote accuracy and  
13 efficiency and reduce SBC Missouri’s expenses, which ultimately benefits end users.

14 **Q. HOW LONG DOES IT TAKE SBC MISSOURI TO DELIVER BILLS**  
15 **ELECTRONICALLY?**

16 A. Bill files destined for electronic distribution, using Connect: Direct or EDI, to CLECs are  
17 automatically forwarded to CLECs. Those bills are available to the CLEC within 24  
18 hours of the bill release. Bill files such as cartridge, CDROM, or DVD are created in an  
19 electronic format but are not delivered electronically. Instead cartridges, CDROMs and  
20 DVDs are mailed to CLECs within 24 hours of the bill release, Monday-Friday.

21 **Q. DO THE CLECS KNOW WHEN THEY ARE GOING TO RECEIVE THEIR**  
22 **BILL EACH MONTH?**

23 A. Yes. When the CLEC establishes its CLEC Profile it selects the bill media, as well as the  
24 bill date. This allows the CLEC to determine when it receives its bills. In the course of  
25 its normal business, a CLEC should have resources dedicated to receiving, verifying, and

1 paying bills, not only from SBC Missouri, but from any other vendor or supplier with  
2 which the CLEC contracts. If, as the CLECs claim, they do not have time to adequately  
3 review their bills, the CLECs need to re-evaluate how they receive their monthly bills or  
4 commit additional resources to reviewing bills.

5 **Q. WHAT OTHER OPTIONS DOES SBC MISSOURI OFFER IN ORDER TO**  
6 **PROVIDE CLECS WITH A LONGER BILL REVIEW WINDOW?**

7 A. To enable CLECs to have the largest billing review window possible, SBC Missouri has  
8 offered CLECs, and many of them have agreed, use of the Automated Clearinghouse  
9 (“ACH”) method of paying bills. Paying bills via the ACH method enables more  
10 expedited electronic payment of bills. When using ACH, CLECs have total control over  
11 their payment amounts as well as the timing of submitting their payments. CLECs can  
12 add remittance information to their payments and the payments are processed and applied  
13 electronically to the designated accounts. There is no manual intervention in applying  
14 correct amounts to the given accounts. Importantly, SBC Missouri is not able to deduct  
15 amounts from a CLEC’s bank accounts under this method.

16 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

17 A. SBC Missouri offers several alternatives, as shown above, for the CLEC community to  
18 allow increased time frames in which the CLECs can review the bill, dispute if necessary,  
19 and render payment. The CLEC Community seeks to shift the burden and expense to  
20 SBC. SBC Missouri respectfully requests the Commission to adopt its language which  
21 provides the CLEC community the time necessary to review and remit or dispute  
22 payment.

23 **CHARTER GT&C Issue 33**

24 **Issue Statement:** *Should CLEC expect to receive monetary credits for resolved*  
25 *disputes (in their favor) if CLEC has outstanding and or other past*  
26 *due balances due to SBC?*  
27

1 **Q. WHAT IS THE DISPUTE WITH THIS ISSUE?**

2 A. SBC Missouri has proposed reasonable terms for the handling of escrowed funds  
3 upon resolution of billing disputes. SBC Missouri has proposed language in  
4 Section 8.7.1.1 that within ten business days following the resolution of a dispute  
5 that the portion of the escrowed amount resolved in favor of the non-paying party  
6 be released to the non-paying party with any interest accrued. Also, in Section  
7 8.7.1.2, SBC has proposed that within ten business days following the resolution  
8 of a dispute that the portion of the escrowed amount resolved in the billing party's  
9 favor be released to the billing party with any interest accrued. Finally, SBC has  
10 proposed language that any late payment charges not covered by the interest  
11 earned in the escrow account be payable by the non-paying party no later than the  
12 third bill due date. Charter disagrees and has proposed language that would  
13 require the billing party, upon resolution of a dispute in the non-paying party's  
14 favor, make a payment in immediately available funds no later than 14 calendar  
15 days following the resolution of the dispute.

16 **Q. WHY IS SBC MISSOURI'S LANGUAGE MORE APPROPRIATE?**

17 A. If the Commission finds that escrows are appropriate, it is only reasonable that the  
18 portion of disputed amount resolved in favor to the billing party be applied toward the  
19 appropriate account. Also, disputed amounts resolved in favor of the non-paying party  
20 should be dispersed from the escrow account with interest to the non-paying party and the  
21 appropriate billing account credited to reflect the resolution of the dispute. If, for  
22 whatever reason, the appropriate billing account cannot be credited, SBC should work  
23 with the CLEC to determine if another account is past due and apply the funds to that  
24 account. SBC's proposed language is entirely reasonable.

1 **CLEC Coalition GT&C Issue 8, PAGER Company GT&C Issue 9**

2 **Issue Statement:** *Should the agreement contain procedures for back-billing?*

3  
4 **Q. SHOULD THE AGREEMENT CONTAIN BACK-BILLING AND BACK-**  
5 **CREDITING LANGUAGE?**

6 A. Yes. Although the parties endeavor to provide the most accurate billing possible, it is  
7 reasonable to expect an occasional back-billing or credit claim to arise. The billing party  
8 should be able to take advantage of any increases in rates determined in such a  
9 proceeding for the same period of time that the billed party is entitled to receive the  
10 advantage of any reduction in rates ordered in such a proceeding. SBC Missouri's  
11 proposed language allows the billed party to bring a dispute for billing issues where the  
12 bill has been paid in full, and subsequently a disputed amount is found, for a 12-month  
13 period. A 12-month limitation on back-billing and credit claims provides a reasonable  
14 period of time for any error that occurred to be discovered by one party and brought to  
15 the attention of the other party.

16 **Q. IN ITS DPL, THE CLEC COALITION'S POSITION SAYS THAT SIX MONTHS**  
17 **IS THE TIME FRAME THAT A CLEC CAN HAVE ANY HOPE OF PASSING**  
18 **THROUGH BACK-BILLING CHARGES TO THE CUSTOMER. DO YOU**  
19 **AGREE?**

20 A. No. Presumably, the CLEC has structured its retail offerings to end users taking its  
21 costs into consideration, that is, one component of the offering should be the rate actually  
22 listed in its agreement. Therefore, the CLEC would have already billed its end users.

23 **Q. SHOULD BACK-CREDITS APPLY IN THE SAME WAY AS BACK-BILLING?**

24 A. Yes. Just as with back-billing, back-crediting is adjusting the bill or what was paid to the  
25 correct rate in the agreement or what should have been paid. Unlimited back-crediting is  
26 patently unfair when coupled with limited back-billing. All parties, SBC, and the CLEC  
27 community should be limited to the same time frame for reconciliation of bills.

1 **Q. WHAT OTHER CONSIDERATIONS MUST BE CONSIDERED WHEN**  
2 **DISCUSSING BACK-CREDITS?**

3 A. Record retention must be considered. Records must be available to support any back-  
4 billing and back-credit claims. Records are not maintained to support unlimited back-  
5 crediting. It would be costly and burdensome to require SBC Missouri to maintain  
6 records for an excessive period of time. The CLEC Coalition's position that back-credits  
7 should be allowed without restraint and with no limitation is "bad public policy" and  
8 completely unreasonable.

9 **Q. SHOULD BACK-BILLING CHARGES AND/OR CREDITS BE SET OUT**  
10 **SEPARATELY ON THE BILL?**

11 A. If the billing system is capable of calculating the credit or back-billing mechanically,  
12 charges and/or credits are already set out separately on a bill. However, most credits and  
13 back-billing (i.e. non-recurring charges) require manual identification, calculation, and  
14 application. This type of charge or credit cannot be set out separately because of the  
15 method of application. CLEC bills are produced from the same billing systems that  
16 provide bills for all SBC Missouri customers. The credits are generally applied on the  
17 bill in the "other charges and credits" section; however, the term "back-billed" is not  
18 programmed as a phrase code in SBC Missouri's billing systems. Adding new and  
19 additional categories is unnecessary and would be both expensive and time consuming.  
20 The Commission should accept SBC Missouri's proposal to identify such charges and  
21 credits on the bill through the existing system.

22 **CLEC Coalition GT&C Issue 7(c)**

23 **Issue Statement:** *(c) With the instability of the current telecommunications*  
24 *industry, is it reasonable to require CLECs to escrow*  
25 *disputed amounts so that CLECs do not use the dispute*  
26 *process as a mechanism to delay and/or avoid payment?*  
27

28 **CHARTER GT&C Issue 32, NAVIGATOR GT&C Issue 11(B), PAGER Company**  
29 **GT&C Issue 8**

1 **Issue Statement:** *Is it appropriate to require party's to escrow disputed amounts?*

2  
3 **WilTel GT&C Issue 9**

4 **Issue Statement:** *Should undisputed amounts be paid promptly with disputed*  
5 *amounts resolved in accordance with the dispute resolution*  
6 *procedures or should disputed amounts be required to be*  
7 *paid by each Party into an escrow account?*

8  
9 **WilTel GT&C Issue 11**

10 **Issue Statement:** *(1) Is the creation of an escrow mechanism appropriate?*  
11 *(2) If an escrow mechanism is to be created, what*  
12 *terms and conditions should govern?*

13  
14 **SPRINT GT&C Issue 12**

15 **Issue Statement:** *Should CLEC be required to deposit disputed funds into an*  
16 *interest bearing escrow account?*

17  
18 **Q. WHY IS IT REASONABLE TO INCLUDE ESCROW PROVISIONS FOR**  
19 **DISPUTED AMOUNTS IN THE AGREEMENT?**

20 A. Requiring the disputing party to escrow disputed amounts is not only reasonable,  
21 it is necessary. Since 2000, approximately 180 CLEC customers have ceased operations  
22 in SBC's 13-state incumbent region. This demonstrates that many CLEC customers  
23 represent unacceptably high credit risks. For these high-risk CLECs, there is a very real  
24 possibility that they would be unable to pay SBC Missouri for the services SBC Missouri  
25 has rendered to them in the absence of an escrow requirement. In fact, I am aware of  
26 many instances of CLECs raising disputes just to avoid having to pay for services  
27 rendered. This delay tactic results in higher uncollectible receivables for SBC Missouri.  
28 As a result, SBC Missouri proposes that CLECs disputing their bills should be required to  
29 escrow the disputed amount. In contrast, the CLECs hold varying positions on escrow  
30 requirements, proposing instead that they should be able to dispute their bills and  
31 withhold payment regardless of the dispute's merits.

32 **Q. DOES SBC MISSOURI PROPOSE ANY EXCEPTIONS TO THE ESCROW**  
33 **PROVISION?**

34 A. Yes. SBC Missouri proposes exceptions for CLECs that have:

- established good payment records;
- filed disputes that were largely resolved in the CLEC's favor; and
- material billing errors.

SBC Missouri's proposed exceptions enable CLECs with legitimate disputes, a good credit history, or who have been materially over-billed to avoid escrowing disputed amounts.

**Q. HOW DOES A CLEC ESTABLISH A GOOD PAYMENT RECORD?**

A. If a CLEC has paid its bills, on time, for the previous 12 months, then SBC Missouri would acknowledge that the CLEC has established a good payment record. Put another way, if a CLEC has gone 12 months without receiving a collection letter from SBC Missouri then it would have established a good payment record.

**Q. WHY IS 12 MONTHS AN APPROPRIATE TIME PERIOD TO USE TO DETERMINE IF A CLEC HAS ESTABLISHED A GOOD PAYMENT RECORD?**

A. SBC Missouri has observed that many CLECs experience uneven cash flows in their businesses. One example of this are CLECs which target the pre-paid residential phone market because that market's end users routinely drop and add service throughout the year. As a result, in order to get an accurate picture of how a CLEC pays its bills throughout the CLEC's business cycle, it is essential to look at a 12 month picture.

**Q. WHAT CRITERIA WOULD BE USED TO DETERMINE IF THE CLEC HAS A HISTORY OF FILING BILLING DISPUTES THAT WERE RESOLVED IN THE CLEC'S FAVOR?**

A. If, within the 12 months preceding the dispute in question, the CLEC had filed four or more billing disputes that were resolved in favor of SBC Missouri, that CLEC would not satisfy the criteria of a history of billing disputes that were resolved in the CLEC's favor.

**Q. WHY IS THIS CRITERION NECESSARY?**

1 A. SBC Missouri has encountered CLECs that routinely file bogus disputes. In fact, some  
2 CLECs engage in the practice of filing disputes as a strategy to avoid paying their bills.  
3 An escrow requirement would deter unscrupulous CLECs from using this strategy. Also,  
4 an escrow requirement would protect SBC Missouri against the increased risk of CLEC  
5 non-payment. Moreover, the escrow requirement is narrowly tailored to protect SBC  
6 Missouri's legitimate financial interests. The requirement applies only if a CLEC has  
7 filed four or more meritless claims in the previous 12 month period. Therefore, SBC  
8 Missouri's proposal would allow CLECs with a history of filing legitimate disputes to  
9 avoid escrowing disputed amounts.

10 **Q. WHAT IS SBC MISSOURI OFFERING IN SITUATIONS WHERE MATERIAL**  
11 **BILLING ERRORS MAY HAVE OCCURRED?**

12 A. SBC Missouri believes that it rarely makes billing errors. However, no system is perfect.  
13 Therefore, if a CLEC notifies SBC Missouri by the Bill Due Date that it believes SBC  
14 Missouri made a material billing error, SBC Missouri would investigate the allegation  
15 and determine if it agrees that a material billing error may have occurred. If, after  
16 reviewing the bill, SBC Missouri determines that it may have made a material billing  
17 error, SBC Missouri would notify the CLEC that no escrow requirement for any disputed  
18 amounts related to the material billing error would apply.

19  
20 **Q. HAVE ANY STATE COMMISSIONS RULED IN FAVOR OF PLACING**  
21 **DISPUTED AMOUNTS INTO AN INTEREST-BEARING ESCROW ACCOUNT?**

22 A. Yes, in several instances. In the MCI Metro Ohio (MCI<sub>m</sub>) arbitration, Case No. 01-  
23 1319-TP-ARB, the Public Utility Commission of Ohio adopted SBC Ohio's escrow  
24 language, stating: "Based on the currently tenuous financial condition of MCI  
25 WorldCom, the Commission recommends that an escrow requirement for disputed bills  
26 be incorporated into the parties interconnection agreement as proposed by Ameritech."



1 In addition, the Michigan Public Service Commission ruled in the Level 3 arbitration,  
2 Case No. U-12460, that: “any disputed amounts should be paid into an interest bearing  
3 escrow account by the bill due date, as provided in Section 9.3.3, and undisputed amounts  
4 should be paid by the bill due date, as provided in section 9.”

5 **Q. THE PAGER COMPANY HAS PROPOSED LANGUAGE IN GT&C SECTION**  
6 **9.5 THAT IF THE NON-PAYING PARTY’S OUTSTANDING UNPAID**  
7 **CHARGES IS LESS THAN 5% OF THE CURRENT BILLING, IT SHOULD NOT**  
8 **BE REQUIRED TO PAY DISPUTED FUNDS INTO AN INTEREST BEARING**  
9 **ESCROW ACCOUNT. WHAT IS SBC MISSOURI’S POSITION?**

10 A. As discussed above, SBC Missouri believes it has proposed reasonable escrow  
11 provisions. In fact, not all CLECs would be required to place disputed funds in an  
12 escrow account. It is worth re-emphasizing that SBC Missouri’s proposed language  
13 requires an escrow account when a CLEC does not have a good payment record,  
14 repeatedly files meritless disputes or in the case of material billing errors. Therefore, it  
15 would be inappropriate to exclude payment of disputed amounts under 5% from the  
16 escrow provision.

17 **NAVIGATOR GT&C Issue 9 and 11(A), SPRINT GT&C Issue 11**

18 **Issue Statement:** *Should GT&Cs contain specific guidelines for the method of*  
19 *conducting business transactions pertaining to the rendering of*  
20 *bills, the remittance of payments and disputes arising thereunder?*  
21

22 **Q. WHAT IS THE DISPUTE WITH THIS NAVIGATOR GT&C 9 AND 11(A)?**

23 A. SBC Missouri and Navigator have agreed (GT&C section 9.1 and 9.2) that the parties  
24 will remit payment within 30 days from the invoice date on undisputed charges. SBC  
25 Missouri and Navigator have also agreed (GT&C section 9.4) that the non-paying party  
26 will pay, when due, all disputed amounts into an escrow account. Therefore, I do not  
27 understand Navigator’s proposal in 9.1 that it will only pay “non-disputed” rates and  
28 charges within 30 days. It simply does not make sense. Navigator’s language is

1 contradictory to the provisions it agreed to above and is sure to lead to disagreements  
2 before the Commission.

3 **Q. PLEASE DESCRIBE THE DISPUTE WITH REGARD TO SPRINT GT&C 11.**

4 A. Sprint objects to SBC Missouri's proposed language which would require Sprint to give  
5 notice on or before the bill due date. In addition, Sprint disagrees with SBC Missouri's  
6 proposed escrow provisions.

7 **Q. IS IT REASONABLE TO EXPECT SPRINT TO NOTIFY SBC MISSOURI OF A**  
8 **BILLING DISPUTE BY THE BILL DUE DATE?**

9 A. Absolutely. Sprint indicates in its DPL position statement that it enjoys a good payment  
10 history with SBC Missouri and has an established practice to audit an invoice at one time,  
11 and then file any disputes and pay the remainder. If this is the case, and I have no reason  
12 to believe otherwise, once Sprint identifies the undisputed portion of the bill, it also has  
13 knowledge of the disputed portion of the bill. SBC Missouri asks that Sprint file a notice  
14 of disputed charges at the same time. It is unreasonable and unacceptable that SBC  
15 Missouri should be left in the dark on the bill due date as to whether Sprint is going to  
16 pay.

17 **Q. IS THERE ANOTHER DISPUTE WITH SPRINT GT&C ISSUE 11?**

18 A. Yes. Sprint disagrees with SBC Missouri's proposed escrow provisions. Sprint asserts  
19 that it enjoys a good payment history with SBC. Again, SBC Missouri's proposed  
20 language provides that if a CLEC has a good credit history with SBC, it is not be required  
21 to place disputed funds into a third party escrow account. SBC Missouri's proposed  
22 language is necessary because SBC must protect itself and, as an ILEC, is required to  
23 allow an MFN into Sprint's agreement. The MFN-ing CLEC may not enjoy the same  
24 level of payment history as Sprint. SBC Missouri's language is reasonable in that it

allows Sprint to avoid escrowing funds so long as it maintains its good credit history and protects SBC Missouri.

**SPRINT GT&C Issue 13(B)**

**Issue Statement:** *Should SBC be obligated to take a CLEC's billing dispute seriously if the CLEC hasn't provided SBC proof that it's place the disputed amount into an escrow account as outlined in the ICA?*

**Q. PLEASE DESCRIBE THE DISPUTE WITH ISSUE SPRINT GT&C 13(B).**

A. Sprint takes issue with SBC Missouri's position that evidence of an escrow account must be provided prior to SBC Missouri conducting the investigation of a dispute.

**Q. WHY DOES SBC REQUIRE EVIDENCE OF THE DISPUTED FUNDS BEING PLACED IN AN ESCROW ACCOUNT BEFORE ENGAGING IN AN INVESTIGATION?**

A. SBC has over 1,500 CLEC agreements on file and while some CLECs are not active, the large majority are active. SBC Missouri wants to provide the best possible service to each CLEC, but the reality is that SBC has limited resources and must focus those resources where most needed. However, SBC Missouri's resources are often misled to investigate meritless disputes that are expensive to research and resolve. In an attempt to protect itself and stem false disputes, SBC has developed an escrow requirement that is equitable to both parties. Certainly, CLECs are not enamored with the idea, but it provides a deterrent to CLECs who file false disputes and would tie up SBC Missouri's resources investigating them. By the same token, SBC Missouri does not have the funds placed in escrow, and in its eyes fully due to it, available for services it has already provided. That fact alone is incentive to research and resolve the dispute in a timely manner. An escrow account appears to be the fairest way to approach payment disputes.

As a result, SBC Missouri believes that evidence that an escrow account has been established is mandatory before it engages in costly and timely investigations.

1 **CHARTER GT&C Issue 34**

2 **Issue Statement:** *Which language should be included in the ICA?*

3  
4 **Q. WHAT IS THE DISPUTE WITH REGARD TO ISSUE 34?**

5  
6 A. Again, Charter did not provide a position statement, but it would appear from its  
7 language that there are two main issues. First, Charter does not agree to provide  
8 information needed to investigate a billing dispute. Second, Charter would strike SBC's  
9 proposed escrow provision in its entirety.

10 **Q. PLEASE DESCRIBE THE INFORMATION NEEDED TO INVESTIGATE A**  
11 **BILL.**

12 A. SBC Missouri proposes the adoption of a uniform bill dispute process for use by all  
13 CLECs. To streamline the process and make sure all necessary work groups are notified  
14 of a billing dispute, SBC Missouri implemented a process that involves submission of  
15 disputes to the LSC (Local Service Center) via a simple form. Use of the form will  
16 ensure that SBC Missouri receives all of the information it needs to investigate the  
17 disputes in a timely manner.

18 SBC Missouri's form requests the following information: the date and amount of the bill;  
19 the amount in dispute; the billing account number; the telephone number, circuit ID  
20 number or trunk number; any USOC information relating to the dispute; and the reason  
21 the CLEC is disputing the billed amount. All of this information is necessary for SBC  
22 Missouri to ascertain the specific nature and amount of charges related to the CLEC's  
23 dispute. It is perfectly reasonable for the CLEC to provide this information because it has  
24 the necessary information and knows its rationale for submitting the dispute. SBC  
25 Missouri witness Fred Christensen addresses this issue in more detail in his testimony.

26 **Q. WHAT IS THE PROBLEM WITH CHARTER'S LANGUAGE IN ISSUE 34**  
27 **SECTION 9.3.1?**

1 A. As shown above, SBC Missouri has proposed language that requires the parties to  
2 provide information necessary to resolve the issue as quickly as possible. SBC attempts  
3 to resolve all billing issues within 30 calendar days, but that is only possible if the parties  
4 are providing information needed to research the issue. Charter proposes a lesser  
5 standard with its language to provide a "...commercially reasonable explanation of the  
6 nature of the dispute, including, to the extent commercially reasonable in the  
7 circumstances, the specific details..." Charter's proposed language will lead to a delay in  
8 the resolution to billing disputes and may result in more disputes before the Commission.

9 **Q. IS THERE ANOTHER DISPUTE WITH REGARD TO CHARTER GT&C ISSUE**  
10 **34?**

11 A. Yes. Charter rejects SBC Missouri's proposed provision for escrow. As shown above,  
12 requiring the disputed amounts be placed into an escrow account is not only reasonable, it  
13 is necessary.

14 **MCIm INV Issue 1**

15 **Issue Statement:** *Should the billed party be entitled to withhold payment on*  
16 *disputed amounts?*  
17

18 **Q. WHAT IS THE DISPUTE WITH MCIm INV Issue 1:**

19 A. MCIm INV 2 addresses disputed amounts. However, with MCIm INV 1, MCIm has  
20 proposed language that would permit it to withhold payment on disputed amounts. With  
21 the history between the parties, and the availability of this agreement to other CLECs via  
22 the MFN process, SBC Missouri believes MCIm's proposal is completely unreasonable.  
23 SBC Missouri has proposed language that would require MCIm to pay in full and dispute  
24 any part of the bill it believes is the result of inaccurate billing, except for Section 8.

25 **Q. WHAT DOES THE EXCEPTION FOR INACCURATE BILLING INCLUDE?**

26 A. SBC Missouri's proposed language provides for those circumstances when: 1) the bill is  
27 rendered in error; or 2) it contains obvious inaccuracies.

**Q. WHAT DOES SBC MISSOURI MEAN BY BILLS RENDERED IN ERROR?**

A. Rendered in error refers to a bill that contains an OCN(s) that does not belong to the billed party or for services that were ordered by another company. In the event the billed party discovers an error in the OCN(s), the billed party can place the disputed amount in a third party interest bearing escrow account and request an investigation. SBC Missouri will research the dispute to determine or confirm if a billing error has occurred.

**Q. WHAT IS AN OBVIOUS INACCURACY?**

A. As defined in SBC Missouri's proposed language, an obvious inaccuracy occurs when the amounts due for a Billing Account Number (BAN) exceeds a 30% increase over the average monthly total for that BAN for the six-month period immediately preceding the invoice in question. Just as with a bill rendered in error, if the billed party discovers an increase of 30% over the average monthly total for that BAN for the six-month period immediately preceding the invoice in question, the billed party may request an investigation. SBC Missouri's proposed language provides that, in this situation, the billing party still has the obligation to remit payment up to 130% of the average monthly total for that BAN and pay the amount above the 130% level into a third party interest bearing escrow account. Again, SBC Missouri will investigate and determine if the billing is inaccurate and the escrowed funds will be dispersed accordingly.

**Q. HOW LONG WILL IT TAKE?**

A. SBC Missouri strives to resolve billing disputes within 30 days. However, it could be longer if SBC Missouri does not have the information necessary to investigate the dispute from the billing party. In order to prevent unnecessary delays, either party can file for dispute resolution per the agreement after 60 days.

**Q. WHY IS SBC MISSOURI'S LANGUAGE APPROPRIATE?**

1 A. SBC affiliated ILECs have has lost approximately \$255 million to CLECs that have  
2 failed to pay their bills. Since SBC Missouri can not refuse credit to a CLEC, it is only  
3 reasonable to address that credit risk with payment terms that, to the extent possible,  
4 protect SBC Missouri. SBC Missouri's payment terms are reasonable and necessary.

5 **MCIm INV Issue 2**

6 **Issue Statement:** *If payments are to be withheld, should they be put in an interest-*  
7 *bearing escrow account tpending resolution of a dispute?*  
8

9 **Q. PLEASE DESCRIBE THE DISPUTE WITH REGARD TO MCIm INV 2?**

10 A. Just as with inaccurate billing investigations above, MCIm has proposed withholding  
11 payments on disputed amounts. This is obviously a major concern to SBC Missouri,  
12 since the billed party could claim a dispute to delay or avoid payment. As a result, SBC  
13 Missouri has proposed language that the billed party, at its choice, either pay and dispute  
14 the bill or pay the disputed amounts into a third party interest bearing escrow account.

15 **Q. PLEASE DESCRIBE THE TERMS OF THE ESCROW ACCOUNT PROPOSED**  
16 **TO MCIm.**

17 A. The escrow account terms are essentially the same as provided to all CLECs.  
18 Specifically, that the financial institution must be located within the continental United  
19 States, it must be able to transmit funds via ACH, and it may not be an affiliate of either  
20 party.

21 **MCIm INV Issue 3**

22 **Issue Statement:** *When a party disputes a bill, how quickly should that party*  
23 *be required to provide the other party all information*  
24 *related to that dispute?*  
25

26 **Q. PLEASE DESCRIBE THE NATURE OF THE DISPUTE.**

27 A. SBC Missouri and MCIm disagree about the time frame in which the billing party must  
28 provide specific details to support the dispute. SBC Missouri believes that dispute notice  
29 and specific information supporting the dispute should be provided prior to the bill due

1 date. However, SBC Missouri has proposed in those instances where the billed party  
2 cannot reasonably identify the specific circuit or bill detail at the time it provides dispute  
3 notice, it should certainly provide the information no later than 30 days following the  
4 notice of dispute. MCIm seeks 90 days to provide such information.

5 **Q. SBC MISSOURI BELIEVES THAT THE BILL DISPUTE SUPPORTING**  
6 **INFORMATION SHOULD BE PROVIDED NO LATER THAN THE BILL DUE**  
7 **DATE. PLEASE ELABORATE.**

8 A. Certainly. SBC Missouri cannot begin its research until it has the information necessary  
9 to investigate the dispute. MCIm should provide all information necessary and available  
10 to SBC Missouri by the bill due date and that should not be difficult because the  
11 information, for the most part, is on SBC Missouri's bill rendered to MCIm.  
12 Nevertheless, SBC Missouri believes in those rare circumstances where the circuit or bill  
13 detail is not available, MCIm should provide that information within 30 days of the  
14 notice of dispute.

15 MCIm proposal of 90 days is another attempt to delay or avoid payment. The  
16 Commission should adopt SBC Missouri's reasonable language that promotes quick  
17 resolution for billing disputes.

18 **Q. IS THERE ANOTHER DISPUTE WITH REGARD TO THIS ISSUE?**

19 A. Yes. MCIM disputes SBC Missouri's proposed language in Invoicing Section 6.2 that  
20 the billing party will apply any credit(s) associated with the dispute consistent with the  
21 stake date limitations.

22 **Q. WHY IS SBC MISSOURI'S LANGUAGE APPROPRIATE?**

23 A. The parties have agreed in Invoicing Section 6.1 that in order to achieve greater certainty  
24 in the billing and bill auditing processes, they will contractually limit how far back a  
25 claim of underbilling or overbilling can go.



1           The dispute here concerns SBC's Missouri's proposed language in Invoicing  
2           Section 6.2 that would allow SBC Missouri to apply any credits associated with a dispute  
3           to the BAN consistent with the stake dates. MCIIm disagrees with SBC Missouri's  
4           proposal.

5   **Q.   WHY IS SBC MISSOURI'S LANGUAGE REASONABLE?**

6   A.   SBC Missouri believes that whenever possible, any credit should be applied to the BAN  
7           where the discrepancy was originally found. MCIIm language would leave the agreement  
8           silent as to the application of credits. SBC Missouri's language adds clarity.

9   **MCIIm INV Issue 4**

10   **Issue Statement:**   *What should trigger the contractual stake date limits?*

11  
12   **Q.   WHAT IS THIS DISPUTE ABOUT?**

13   A.   As discussed above, the stake date means the point in time before which no adjustments,  
14           credits, refunds, reimbursements, or other billing true ups will apply, based on the filing  
15           of claims and Bill Dates. The dispute with this issue concerns whether the stake date  
16           limits should be based on the date of the claim or the bill date.

17   **Q.   WHAT IS MCIIm'S PROPOSAL AND WHY SHOULD IT BE REJECTED ?**

18   A.   MCIIm proposes language that the stake date should be tied to the bill date. However, a  
19           bill date may not exist. For example, the Commission may issue an order that has a  
20           retroactive effect on charges. In this situation no bill date would exist. MCIIm's language  
21           is too broad and could lead to disputes before the Commission. SBC Missouri  
22           respectfully requests the Commission to adopt SBC Missouri's language.

23   **E.   [DISPUTE RESOLUTION: CLEC Coalition UNE 66, CLEC Coalition GT&C 11 & 19,**  
24           **CHARTER GT&C 36, WiTel UNE 5(A)]**

25   **CLEC Coalition UNE Issue 66**

26   **Issue Statement:**   *(1) Should SBC Missouri be required to complete its investigation*  
27                           *of billing disputes within 90 days of receipt of CLEC's dispute*  
28                           *submission?*

1 (2) Should credits be applied to the same Billing Account Number  
2 (BAN) for which a billing item was the subject of dispute?  
3

4 **Q. HOW LONG SHOULD THE PARTIES HAVE TO RESOLVE BILLING**  
5 **DISPUTES?**

6 A. SBC Missouri strives to reach resolution within thirty business days of receipt of the  
7 CLEC's written notice of a billing dispute. However, if the information necessary to  
8 research the dispute is not provided in a timely manner, SBC Missouri's investigation  
9 may take longer, depending upon when SBC Missouri receives the necessary information  
10 from the CLEC to investigate the dispute. SBC Missouri's language provides parties the  
11 option to pursue the dispute resolution process if the issue has not been resolved within  
12 thirty business days. It is beneficial to both parties to permit sufficient time to research  
13 and resolve billing disputes prior to seeking resolution from the Commission.

14 **Q. HOW SHOULD CREDITS BE APPLIED?**

15 A. As stated above, whenever possible, any credit or back billing should be placed against  
16 the BAN where the discrepancy was originally found.

17 **Q. WHAT IS THE ISSUE WITH THE CLEC COALITION'S LANGUAGE IN**  
18 **SECTION 8.1?**

19 A. The CLEC Coalition's language is too narrow and does not allow for unforeseen  
20 circumstances. If, for some reason, the BAN was changed/removed in the intervening  
21 time or some other agreement is made with the customer, but the credit or back billing is  
22 justified and documented, then another related BAN should receive the credit or be  
23 charged the back billing.

24 **Q. IN YOUR ABOVE SCENARIO, HOW WOULD THE CLEC COALITION KNOW**  
25 **WHAT BAN SHOULD HAVE BEEN CREDITED?**

26 A. In the above scenario, SBC Missouri works closely with the CLEC to address the issue.  
27 The Local Service Center ("LSC") billing team, where the dispute will be documented  
28 and ultimately resolved, will have a record of all final dispute resolutions, as well as, the

1 application of the credit/back billing treatment. This information can be provided to the  
2 CLEC upon request. SBC is committed to working with CLECs to provide the  
3 information needed to accurately reflect back billing and credits. However, the CLEC  
4 Coalition's language does not allow the flexibility needed to apply credits appropriately.

5 **Q. WAS THIS ISSUE SETTLED IN THE TEXAS T2A ARBITRATION?**

6 A. Yes, and SBC Missouri is agreeable to the same language in Missouri that settled the  
7 issue in Texas. The language is as follows:

8 8.1 CLEC may request that a billing item be investigated on the SBC-  
9 MISSOURI provided bill. CLEC is required to follow the existing  
10 billing dispute guidelines by submitting the billing dispute form  
11 available in the CLEC Handbook and supplying applicable  
12 information to the SBC-MISSOURI Local Service Center (LSC).  
13 The SBC-MISSOURI LSC will perform investigation on each  
14 disputed item. The LSC shall complete its investigation and  
15 inform CLEC of the results within 90 days of receipt of CLEC's  
16 dispute submission, unless the Parties mutually agree to a longer  
17 period of time based on the complexity of the nature of the dispute.

18  
19 **CLEC Coalition GT&C Issue 11, CHARTER GT&C Issue 36**

20 **Issue Statement:** *Should SBC Missouri's language for dispute resolution that has*  
21 *been established for all CLECs be included in the agreement?*  
22

23 **Q. SHOULD THE AGREEMENT CONTAIN DISPUTE RESOLUTION**  
24 **PROVISIONS AND WHY?**

25 A. Yes, the agreement that results from this proceeding should include dispute resolution  
26 language. SBC Missouri's language properly provides that the parties must pursue  
27 informal dispute resolution for 60 days before either party may invoke the dispute  
28 resolution procedure available pursuant to the Commission's complaint process.  
29 Informal dispute resolution saves time, resources, and money not only for SBC Missouri  
30 and the CLEC, but also for the Commission. However, disputes can only be resolved if  
31 SBC Missouri has received the adequate information from the CLEC to resolve the issue.  
32 To facilitate the prompt resolution of disputes, SBC Missouri proposes the use of a

1 standard dispute form for this purpose. The dispute form requests information and  
2 provides room for CLEC comment to assist in investigating the dispute. SBC witness  
3 Fred Christenson will address the dispute form further in his direct testimony.

4 **Q. WHAT PART OF SETTLEMENT NEGOTIATIONS SHOULD NOT BE**  
5 **DISCOVERABLE?**

6 A. The CLEC Coalition proposes that settlement offers, but not settlement negotiations,  
7 should be exempt from discovery. SBC Missouri's proposed language provides that all  
8 settlement discussions and correspondence should be exempt from discovery. It is in  
9 both parties' best interest to maintain the traditional confidentiality of settlement  
10 negotiations and protect such communications from discovery. The assurance of non-  
11 disclosure encourages parties to be frank and forthcoming in settlement negotiations.  
12 When parties withhold information during settlement negotiations for fear that it will  
13 later be disclosed, the result is an increased failure to resolve matters through negotiation,  
14 thus leading to Commission involvement. By adopting SBC Missouri's proposed  
15 language, the Commission will encourage negotiated settlements.

16 **Q. SHOULD THERE BE AN EXPEDITED PROCEDURE FOR RESOLUTION OF**  
17 **"CUSTOMER-AFFECTING DISPUTES?"**

18 A. The CLEC Coalition's proposed language for yet another dispute resolution process for  
19 "customer-affecting disputes" is unnecessary and unworkable. The parties should work  
20 through the dispute resolution process to resolve any dispute prior to seeking  
21 Commission intervention and should avoid encumbering the Commission's schedule  
22 when a dispute "threatens to interrupt" the service of a customer. The CLEC Coalition's  
23 language is unreasonable and would likely result in unnecessary disputes before the  
24 Commission.

25 **CLEC Coalition GT&C Issue 19**

26 **Issue Statement:** *Should CLECs' language be included in the agreement?*

1  
2 **Q. SHOULD THE AGREEMENT CONTAIN AN ADDITIONAL PROCESS FOR**  
3 **ESCALATION?**

4 A. The CLEC Coalition proposes an expedited dispute resolution process that it refers to as  
5 “escalation of unresolved matters.” The CLEC Coalition’s proposal would require the  
6 parties to agree to an escalation process for “all major business processes.” The  
7 escalation process would require both parties to provide names, telephone numbers, and  
8 pager numbers of managers up to the vice president level for escalation. Each level of  
9 management would have just one hour to respond to an escalation before it is escalated to  
10 the next level. SBC Missouri opposes this language for the same reason it opposes other  
11 expedited dispute resolution procedures proposed by CLECs: the parties simply must be  
12 afforded a reasonable amount of time to investigate disputes. SBC Missouri’s proposed  
13 dispute resolution procedures provide a uniform process that entails sufficient time for  
14 investigation and negotiation. It is also important to remember that SBC Missouri  
15 already makes available escalation lists, including contact numbers, on the CLEC Online  
16 website. These lists may be used for matters such as repair, billing disputes, etc.

17 **WilTel UNE Issue 7(A)**

18 **Issue Statement:** *Is it reasonable that SBC Missouri be allowed to include terms and*  
19 *conditions within the agreement that protect the ILEC’s network?*  
20

21 **Q. WHY IS IT APPROPRIATE TO PURSUE DISPUTE RESOLUTION PRIOR TO**  
22 **PURSUING DISPUTES AT THE COMMISSION OR IN COURT?**

23 A. As stated above, SBC Missouri’s dispute resolution process is an efficient, proven  
24 method of resolving disputes without Commission or court involvement. The informal  
25 dispute resolution process requires the parties to meet and negotiate a dispute for a certain  
26 period of time prior to filing a complaint with the Commission. It provides the parties  
27 time to investigate the dispute and time to negotiate a resolution. Informal dispute

1 resolution saves time, resources, and money not only for SBC Missouri and the CLEC,  
2 but also for the Commission.

3 **F. NON-PAYMENT AND PROCEDURES FOR DISCONNECTION: AT&T GT&C 5 & 6,**  
4 **CLEC Coalition GT&C 12, PAGER Company GT&C 10, NAVIGATOR GT&C 10 & O&P**  
5 **2**

6  
7 **AT&T GT&C Issue 5**

8 **Issue Statement:** *Under what circumstances may SBC Missouri discontinue*  
9 *providing services for nonpayment including discontinuing*  
10 *collocation?*  
11

12 **CLEC Coalition GT&C Issue 12, PAGER Company GT&C Issue 10**

13 **Issue Statement:** *Under what circumstances may SBC disconnect services for*  
14 *nonpayment?*  
15

16 **MCIm GT&C Issue 7**

17 **Issue Statement:** *What terms and conditions should apply in the event the*  
18 *billed party does not either pay or dispute its monthly*  
19 *charges?*  
20

21 **Q. WHAT ARE THE MAJOR DISPUTES REGARDING NON-PAYMENT AND**  
22 **DISCONNECTION?**

23 A. SBC Missouri has proposed reasonable non-payment and disconnection language for the  
24 ICA. The CLECs raise two primary issues with SBC Missouri's proposed language.  
25 First, the CLECs inappropriately seek to lengthen the disconnection timeline. Second,  
26 the CLECs want to limit any disconnections to the specific unpaid accounts.

27 **Q. WHAT IS SBC MISSOURI'S POSITION ON THE DISCONNECTION**  
28 **TIMELINE?**

29 A. SBC Missouri should be able to send a collection letter to a CLEC any time that there are  
30 past due amounts owing. This initial collection letter provides that the non-paying party  
31 must remit all Unpaid Charges to the Billing Party within ten business days. If the Non-  
32 paying Party wants to dispute any of the unpaid charges, it must notify the Billing Party  
33 in writing of any disputes in detail, pay all undisputed amounts owing, and pay all  
34 disputed amounts into an interest-bearing escrow account all within ten business days. If,

1 after the expiration of the time period set out in the written notice, the Non-paying party  
2 has not met its obligations under the first letter, SBC Missouri sends a second letter  
3 demanding that the outstanding unpaid balance be paid within five business days. At the  
4 time of the second letter SBC Missouri could suspend order acceptance. If the Non-  
5 paying Party fails to pay within five business days SBC Missouri may disconnect the  
6 CLEC's services, provided that Unpaid Charges exceeded 5% of the aggregate amount  
7 billed by SBC to the CLEC in Missouri in the prior month.

8 SBC Missouri's proposed language is necessary in light of the current financial  
9 climate. SBC Missouri's proposal gives the CLEC approximately 60 days from the  
10 invoice date to pay for undisputed charges (which actually are due 30 days from the  
11 invoice date) before a disconnection takes place. Of course, this assumes the CLEC is  
12 not able to delay the termination. On the other hand, the CLEC's proposal would give  
13 the CLEC approximately 125 days from the invoice date to pay SBC Missouri before a  
14 termination would be possible. This is unacceptable to SBC Missouri. Moreover, these  
15 figures do not include the additional exposure SBC Missouri faces when it provides  
16 service to the CLEC's end users until the end users are able to obtain alternative service.  
17 Factoring in this transition of end users, SBC Missouri would be exposed to 90 days of  
18 service under its proposed terms and 155 days of service under the CLECs' proposal. The  
19 CLEC proposal would destroy a CLEC's incentive to timely compensate SBC Missouri  
20 and would encourage CLECs to game the system in complete disregard of the invoice  
21 and due dates on invoices which the CLECs acknowledge they are required to pay. The  
22 CLECs' proposed timeline is unworkable, especially given the high credit risk many

CLECs pose to SBC Missouri and the relatively small amount of deposits SBC Missouri seeks.

**Q. PLEASE DESCRIBE SBC MISSOURI'S POSITIONS REGARDING THE DISCONNECTION TIMELINE?**

A. With respect to the disconnection timeline, SBC Missouri does not believe the CLECs' position is reasonable. It is worth reiterating – this discussion relates to *undisputed charges*. The CLECs have simply identified nothing that would justify them to have 124 days to pay a 30-day invoice which they agree they owe. Under the CLECs' proposed timeline, it would take at least 125 days from the invoice date to disconnect a CLEC's service. This is more than four months and is completely unreasonable, especially when considered in light of the CLECs' proposal regarding deposits. Put another way, if SBC is exposed to nearly 5 months of services before disconnection can occur, then it would be appropriate for high risk CLECs to post deposits totaling 5 months of service. SBC Missouri's timeline for terminating services to the CLEC approximately 60 days from invoice date and continuing to provide service to the CLECs end users for an additional 30 days is more reasonable because it corresponds to SBC Missouri's three month deposit proposal. Furthermore, 60 days to pay for undisputed amounts that are actually due within 30 days is more than reasonable and gives CLECs more than adequate time to pay.

**Q. WHY IS SBC MISSOURI PROPOSING A 5% THRESHOLD BEFORE PROCEEDING WITH A DISCONNECTION?**

A. SBC Missouri believes that having a 5% limitation before it disconnects a CLEC's service addresses the CLECs' concern that all their services may be disconnected even if they were only past due a small amount on one account. If a CLEC's unpaid balance is 5% or more of monthly billed charges, then the past due amount is material and



1       disconnection should take place. After all, if the CLEC wishes to discontinue only  
2       certain services, then it has the obligation and opportunity to do so by placing the  
3       appropriate disconnection orders.

4       **Q. WHY DOES SBC MISSOURI DISAGREE WITH MCI's PROPOSAL THAT**  
5       **TERMINATIONS SHOULD BE DONE ON INDIVIDUAL ACCOUNTS?**

6       A. SBC Missouri disagrees with this proposal for several reasons. First, the proposal would  
7       permit a CLEC to avoid disconnection of certain services by simply moving end users  
8       into different types of service. For example, resale end users could be converted to UNE  
9       lines, which would cause the same services to be billed under different accounts. Also,  
10      lines could be converted from UNE to resale to avoid disconnection. Under the CLEC's  
11      proposal, a creative CLEC could potentially game the system and avoid disconnection  
12      simply by moving services around. As mentioned earlier, SBC Missouri protects the  
13      CLEC from being terminated in full because of a few small unpaid balances by requiring  
14      that the unpaid balance to exceed 5% of the monthly charges under the ICA before  
15      termination can occur.

16      **Q. DOES AT&T HAVE AN OPPORTUNITY TO FILE A DISPUTE PRIOR TO**  
17      **SBC'S TERMINATION OF PRODUCTS OR SERVICES?**

18      A. Certainly, and SBC's proposed language provides that a CLEC can dispute the charges.  
19      If fact, the parties agreed to language in Section 8 of the GT&Cs that addresses billing  
20      disputes and encourages AT&T to file a dispute in the event an error is discovered.  
21      Furthermore, SBC's proposed language provides that 15 days after the second demand  
22      letter, which is equivalent to 60 days from the bill date, SBC can: 1) suspend pending  
23      orders; and 2) suspend acceptance of new orders, not terminate currently working vital  
24      services or products as AT&T's position indicates. SBC seeks reasonable language that  
25      simply requires AT&T to remit payment or dispute the bill, but not leave SBC wondering

1 if it intends to pay. AT&T's language does nothing more than delay payment for services  
2 rendered.

3 **NAVIGATOR GT&C Issue 10**

4 **Issue Statement:** *Should SBC's language regarding grounds for termination of non-*  
5 *pay be included in this agreement?*  
6

7 **Q. SHOULD SBC MISSOURI BE ALLOWED TO CHARGE LATE PAYMENT**  
8 **CHARGES ON DISPUTED AMOUNTS?**

9 A. If a CLEC files a complaint by the bill due date, no late payment charges would be  
10 appropriate. However, if the non-paying party does not remit and does not dispute, late  
11 payment charges are appropriate until such time as the non-paying party does dispute the  
12 charges. SBC Missouri's language is reasonable in that if the CLEC wishes to avoid  
13 incurring late payment charges, it should simply remit payment or dispute the charges.

14 **Q. DOES NAVIGATOR GT&C ISSUE 10 INCLUDE AN ADDITIONAL ISSUE?**

15 A. Yes. SBC has proposed language that until the CLEC provides evidence that the  
16 disputed funds have been placed into an escrow account, the unpaid funds will not be  
17 considered disputed. This issue is discussed further in Sprint GT&C 13(B) above.

18 **AT&T GT&C Issue 6**

19 **Issue Statement:** *Must AT&T comply with the dispute resolution procedures in*  
20 *Section 8.0 as well as Section 9.0 to prevent such disconnection?*

21 **Q. HOW DOES SBC MISSOURI RESPOND TO AT&T'S PROPOSAL THAT IT**  
22 **MAY INVOKE DISPUTE RESOLUTION?**

23 A. AT&T states in its DPL position statement that it wants the ability to seek Commission  
24 intervention if SBC seeks to discontinue services for non-payment. This proposal is both  
25 unreasonable and unnecessary. First, adding this onerous step would further delay the  
26 termination process and would require SBC Missouri to take on additional monetary risk.  
27 The strain that such a requirement would place on limited Commission resources is self-

evident and imprudent. If AT&T believes it is being unjustly terminated, it has the right to seek redress from the Commission.

**G. [DEPOSITS: CLEC Coalition GT&C 3, MCIm GT&C 6, PAGER Company GT&C 3 & 4, SPRINT GT&C 10, CHARTER GT&C 30, NAVIGATOR GT&C 4, WilTel GT&C 10]**

**CLEC Coalition GT&C Issue 3, MCIm GT&C Issue 6, PAGER Company GT&C Issue 3, Sprint GT&C Issue 10(1)]**

**Issue Statement:** *With the instability of the current telecommunications industry, is it reasonable for SBC Missouri to require a deposit from Parties with a proven history of late payments?*

**CHARTER GT&C Issue 30, NAVIGATOR GT&C Issue 4(a)**

**Issue Statement:** *Should CLEC be required to give SBC an assurance of payment?*

**PAGER Company GT&C Issue 4(1), WilTel GT&C Issue 10(1)**

**Issue Statement:** *Should SBC be allowed to require adequate assurance of payment?*

**NAVIGATOR GT&C Issue 4(b), PAGER Company GT&C Issue 4(2), WilTel GT&C Issue 10(2)**

**Issue Statement:** *If SBC is allowed to require adequate assurance of payment, what form and amount is appropriate?*

**SPRINT GT&C Issue 10(2)**

**Issue Statement:** *What are the appropriate terms and conditions for such a deposit?*

**Q. WHAT IS THE ISSUE REGARDING DEPOSITS?**

**A.** SBC Missouri's proposal requires deposits from CLECs that:

- Have not established a good payment record; or
- Have a history of late payments.

Deposits are a necessity in today's telecom industry. Approximately 180 CLEC customers have ceased operations in SBC's 13 state incumbent region since 2000. This demonstrates that many CLEC customers represent unacceptably high credit risks. Requiring deposits from trade creditors is a standard commercial business practice. However, deposits are even more important for CLECs, since SBC Missouri cannot deny service to a CLEC customer for lack of good credit. In the normal business world,

1 companies have the option to decline to sell products and services to certain high risk  
2 customers on open credit terms and instead demand cash in advance from those  
3 customers. Since high risk CLEC customers must receive open credit terms, requiring  
4 the CLEC to make a reasonable deposit is one of the few safeguards SBC Missouri has  
5 against the risk of payment default.

6 **Q. WHAT IS THE PURPOSE OF REQUIRING A SECURITY DEPOSIT?**

7 A. The purpose of requiring a deposit is to protect SBC Missouri against losses it incurs  
8 when providing services to a CLEC that fails to pay undisputed charges. SBC Missouri's  
9 proposed deposit provision is a reasonable measure to reduce SBC Missouri's risk of loss  
10 from the non-payment of undisputed bills.

11 **Q. CAN YOU DESCRIBE THE DIFFERENCE IN THE SIZE OF THE DEPOSIT**  
12 **REQUIRED AND WHY SBC MISSOURI'S PROPOSAL IS MORE**  
13 **APPROPRIATE?**

14 A. SBC Missouri's proposal requires a deposit equal to 3 months anticipated charges while  
15 the CLECs' proposals requires: (1) no deposit (Sprint); (2) a one-month deposit (MCI, and  
16 Navigator); or (3) a two-month deposit (Charter, Pager Company and CLEC  
17 Coalition). SBC Missouri believes that a 3-month deposit is appropriate given the length  
18 of the disconnection process. Under SBC Missouri's proposed termination process, SBC  
19 Missouri is potentially exposed to 90 days of service before it is able to disconnect a  
20 CLEC and its end user's service. Because of the length of the termination process,  
21 merely requiring a one month deposit, or flat sum of \$17,000 as the CLEC Coalition  
22 proposes, is not sufficient protection against the risk of non-payment.

23 **Q. HAVE ANY OTHER STATE COMMISSIONS APPROVED LANGUAGE IN AN**  
24 **INTERCONNECTION AGREEMENT THAT ALLOWS SBC TO DETERMINE**  
25 **THE AMOUNT OF DEPOSIT BASED ON THREE MONTHS PROJECTED**  
26 **AVERAGE BILLINGS?**

1 A. Yes. In the arbitration between SBC Ohio and MCIIm, Case No. 01-1319-TP-ARB, the  
2 Ohio Commission adopted SBC Ohio's language providing for an initial deposit in an  
3 amount equal to two (2) to four (4) months of projected billings. The Ohio Commission  
4 did not limit the deposit to three months; instead, it allowed SBC Ohio to charge two to  
5 four months of projected average monthly billings for a deposit subject to an external  
6 credit check and/or financial statement review.

7 More recently, in the arbitration between SBC Michigan and MCI Metro, Case  
8 No. U-13758, the Michigan Commission adopted SBC Michigan's language, which is  
9 identical to the language proposed by SBC Missouri in this proceeding. In adopting SBC  
10 Michigan's language, the Commission stated: "If MCIIm does not desire to place its funds  
11 on deposits, it should ensure it pays its bills on time."

12 **Q. PLEASE SUMMARIZE SBC MISSOURI'S PROPOSAL REGARDING DEPOSIT**  
13 **TRIGGERS.**

14 A. SBC Missouri proposes that deposit requirements be triggered if: (a) the Paying Party has  
15 not established satisfactory credit; (b) there has been an impairment of the financial  
16 health or creditworthiness of the Paying Party; (c) the Paying Party fails to timely pay a  
17 bill rendered to it, excluding disputed amounts in compliance with Dispute Resolution  
18 Procedures set forth in the ICA; or (d) the Paying Party admits its inability to pay debts as  
19 they become due, has commenced a voluntary case (or has had an involuntary case  
20 commenced against it) under the U. S. Bankruptcy Code or any other law relating to  
21 insolvency, reorganization, winding up, composition or adjustment of debts or the like,  
22 has made an assignment for the benefit of creditors, or is subject to a receivership or  
23 similar proceeding.

24 **Q. CAN YOU EXPLAIN THE IMPORTANCE OF EACH OF THE FOUR SBC**  
25 **MISSOURI PROPOSED DEPOSIT TRIGGERS?**

1 A. Yes. First, the criteria for establishing satisfactory credit in SBC's proposal is that the  
2 Paying Party must have made at least twelve (12) consecutive months of timely payments  
3 to the Other Party for charges incurred as a CLEC or ILEC. It makes good business  
4 sense for CLECs who have not established satisfactory credit to pay a deposit before they  
5 are allowed to receive services on credit. State commissions in other jurisdictions,  
6 including Michigan, Ohio, and California, have approved language in interconnection  
7 agreements requiring CLECs to pay an initial deposit if it has not established a minimum  
8 of twelve consecutive months of good credit history.

9 Second, is the impairment of financial health or creditworthiness of the Paying  
10 Party. If, at the effective date or any time thereafter, there has been an impairment of the  
11 financial health or creditworthiness of the Paying Party, this will trigger the deposit  
12 requirements. SBC Missouri's proposed triggers for determining impaired  
13 creditworthiness are based on concrete, clearly defined and objective criteria. For  
14 example, impaired creditworthiness will be assessed with reference to the investment  
15 grade credit ratings issued by independent credit rating agencies such as Moody's or  
16 Standard & Poors. This proposed trigger seeks to proactively protect SBC Missouri from  
17 unnecessary exposure due to the impairment of its customers' financial health. Credit  
18 ratings are a key measure of a company's ability to pay its bills and they are an objective  
19 measure. Further, companies with credit ratings below investment grade have  
20 historically high default rates. MCI is a perfect example of this, as its downgrade to  
21 below investment grade in April 2002 foreshadowed its eventual bankruptcy filing in July  
22 2002.

1 Third, SBC Missouri also proposes that the Paying Party's failure to timely pay a  
2 bill rendered to it, excluding disputed amounts, should trigger deposit requirements.  
3 Again, this deposit trigger has been reviewed and approved by other commissions. In  
4 fact, state commissions in Michigan, Ohio, and California have all approved language in  
5 CLEC Interconnection Agreements that require MCI to maintain timely compliance with  
6 its payment obligations. MCI's failure to do so gives SBC the right to require  
7 additional deposits.

8 Fourth, SBC Missouri proposes that the deposit requirement be triggered if the  
9 Paying Party admits its inability to pay debts as such debts become due, has commenced  
10 a voluntary case (or has had an involuntary case commenced against it) under the U. S.  
11 Bankruptcy Code or any other law relating to insolvency, reorganization, winding up,  
12 composition or adjustment of debts or the like, has made an assignment for the benefit of  
13 creditors or is subject to a receivership or similar proceeding. Filing for bankruptcy  
14 protection should not exempt a CLEC from having to pay a deposit, nor should  
15 bankruptcy proceedings prevent SBC Missouri from protecting its financial interests  
16 where possible.

17 **Q. HAVE ANY OTHER STATE COMMISSIONS APPROVED SBC MISSOURI'S**  
18 **PROPOSED DEPOSIT TRIGGERS?**

19 **A.** Yes. In the arbitration between SBC Michigan and MCI, Case No. U-13758, the  
20 Michigan Public Service Commission approved the identical language proposed in this  
21 proceeding by SBC Missouri, stating: "The Commission does not agree with MCI that  
22 the language proposed by SBC Michigan is confusing or leaves in doubt when a deposit  
23 may be required and the amount of any deposit."

24 **Q. THE CLEC COALITION PROPOSES THAT, A CLEC SHOULD BE ABLE TO**  
25 **AVOID PAYING A DEPOSIT IF IT HAS ESTABLISHED ONE YEAR OR MORE**

**OF GOOD PAYMENT HISTORY WITH SBC MISSOURI OR ANOTHER ILEC.  
WHAT IS SBC MISSOURI'S POSITION ON THIS PROPOSAL?**

A. As noted above, SBC Missouri's proposed language allows for a deposit to be waived if a CLEC has demonstrated 12 consecutive months of timely payments to SBC Missouri. However, it is inappropriate to waive deposit requirements based on a CLEC's payment history to another company. First, it can be very difficult to get a proper credit reference from another company. Many companies refuse to provide credit references at all and the ones that do are reluctant to provide specific information.

**Q. THE CLEC COALITION SEEKS TO LIMIT DEPOSITS TO SITUATIONS WHERE THERE IS A NEW RELATIONSHIP AND THE CLEC CANNOT DEMONSTRATE A GOOD CREDIT HISTORY. WHAT IS SBC MISSOURI'S POSITION ON THIS PROPOSAL?**

A. SBC Missouri agrees that new CLEC entrants should have to pay a deposit, but also thinks that CLECs with a demonstrated history of late payments should have to pay a deposit regardless of how long they have been doing business with SBC Missouri. A CLEC, even a long time customer, that has failed to pay its bill under the ICA should not be exempt from paying a deposit. In fact, CLECs with a demonstrated history of poor payments are the highest-risk customers. On the other hand, SBC Missouri agrees that if a CLEC customer has established 12 or more consecutive months with a good payment history then no deposit would be required.

**Q. THE CLEC COALITION HAS PROPOSED LANGUAGE ON BEHALF OF XSPEDIUS THAT ASSURANCE OF PAYMENT SHALL NOT EXCEED ONE MONTH PROJECTED AVERAGE BILLING BY SBC MISSOURI, LESS THE AMOUNT OF BILLING BY XSPEDIUS TO SBC MISSOURI. WHAT IS SBC MISSOURI RESPONSE?**

A. Xspedius' proposed deposit language is inappropriate for several reasons. Xspedius' deposit requirement, as opposed to SBC Missouri's, is not based on: (a) the financial health or creditworthiness of the Paying Party; or (b) the Paying Party's failure to timely



1 pay a bill rendered to it, excluding disputed amounts in compliance with Dispute  
2 Resolution Procedures set forth in the ICA. For example, SBC Missouri's proposed  
3 language is written such that if the paying party disagrees with a bill and communicates  
4 that to the billing party per the agreement, the Paying Party would not be required to pay  
5 a deposit. SBC Missouri's deposit triggers are based on a sound and objective criteria.  
6 The Commission should foster fair deposit requirements based on objective criteria and  
7 the billing party's actual risk.

8 **H. OTHER GT&C ISSUES:**

9 [1. TERM: (MCIIm GT&C 4, PAGER GT&C 5)]

10 **MCIIm GT&C Issue 4**

11 **Issue Statement:** *Should the term of the interconnection agreement be longer than*  
12 *three years?*

13  
14 **Q. WHAT IS THE DISPUTE REGARDING THE TERM OF THE AGREEMENT?**

15 A. It reviewing the DPL filed by the parties on May 2, 2005, that MCIIm and SBC Missouri  
16 have agreed to a three-year term. The remaining disputed language in GT&C Section 7.2  
17 is addressed in MCIIm GT&C Issue 5.

18 **PAGER Company GT&C Issue 5**

19 **Issue Statement:** *Given the changes in the telecom industry, how long should the*  
20 *term of the agreement be?*  
21 *Should SBC be allowed to require assurance of payment as*  
22 *a condition of setting the term of the agreement?*

23  
24 **Q. WHAT IS THE ISSUE WITH REGARD TO THE TERM OF THE**  
25 **AGREEMENT?**

26 A. SBC Missouri accepts Pager Company's proposal of a three year term.  
27  
28

29 **2. NEGOTIATION OF SUCCESSOR AGREEMENT: (CLEC Coalition GT&C 4(a), MCIIm**  
30 **GT&C 5, CHARTER GT&C 29)**

31  
32 **CLEC Coalition GT&C 4(a), MCIIm GT&C 5**

33 **Issue Statement:** *What terms and conditions should apply to the contract after*  
34 *expiration, but before a successor ICA has become effective?*  
35

1 **Q. PLEASE DESCRIBE THE ISSUE WITH REGARD TO SUCCESSOR**  
2 **AGREEMENTS?**

3 A. Parties to an interconnection agreement sometimes find themselves in an uncertain  
4 position when the agreement has terminated and they are negotiating a successor  
5 agreement. Typically, both parties expect to continue doing business with each other  
6 during this period – i.e., to continue their interconnections, payments of intercarrier  
7 compensation, leasing of UNEs, and the like – but it is (or may be) unclear what terms  
8 and conditions are in effect during this period of time. Should it be the terms and  
9 conditions of the parties' terminated interconnection agreement, for example, even  
10 though that agreement is no longer in effect?

11 In order to minimize such uncertainties when this Agreement is terminated or  
12 expires, SBC Missouri has proposed language that sets forth in detail exactly how the  
13 parties are to proceed. SBC Missouri's proposed language provides, for example, that the  
14 agreement will continue on a month-to-month basis if no notice of termination of  
15 agreement is served by either party. Without language to address this issue, SBC  
16 Missouri has no recourse but to provide notice of termination and pursue termination if  
17 no response is received. SBC Missouri's proposed language also addresses what steps  
18 are necessary if the CLEC fails to respond or withdraws its request to negotiate during  
19 the negotiation window. Additionally, once served notice of termination and during  
20 negotiation of a successor agreement, the current agreement will continue in full force  
21 until replaced by a successor agreement, either through negotiation or arbitration.

22 **Q. WHY IS THE SUCCESSOR AGREEMENT LANGUAGE SBC MISSOURI IS**  
23 **PROPOSING IMPORTANT?**

1 A. The agreement must contain terms and conditions for negotiation of a successor  
2 agreement to provide clarity and a framework for what is required to obtain a successor  
3 agreement prior to the expiration of the underlying agreement.

4 The 1996 Act provides for a 135 day window to negotiate an interconnection  
5 agreement and a 135 day window to arbitrate it, but it does not address how this should  
6 be handled between the parties. SBC's language will prevent any confusion between the  
7 parties as to what the parties should expect with regard to renegotiations. For instance,  
8 the language speaks to the length of time that the original agreement's rates, terms and  
9 conditions would continue to apply; that includes the 270-day window (negotiations and  
10 arbitration) plus another 30 days for preparation, signature and filing of the agreement  
11 (10 months). The language also addresses what happens if a CLEC requests  
12 renegotiations and then withdraws such a request.

13 SBC Missouri's proposed language is beneficial to the Commission, CLECs, and  
14 SBC Missouri by providing clarity and avoiding future disputes as to the various  
15 scenarios that take place in the determination of a successor agreement.

16  
17 **Q. WHAT IS YOUR CONCLUSION ON THIS ISSUE?**

18 A. SBC Missouri's proposed language is intended for an important purpose: to avoid  
19 uncertainty about where the parties stand after this Agreement expires or is terminated.

20 **CHARTER GT&C Issue 29**

21 **Issue Statement:** *Should successor language be added to Section 5.6, even though it*  
22 *is stated in Section 5.7?*

23  
24 **Q. PLEASE DESCRIBE THE DISAGREEMENT WITH REGARD TO CHARTER**  
25 **GT&C ISSUE 29.**

26 A. Charter presents language at the end of GT&C Section 5.6 that subject to a  
27 CLEC's Section 252(a)(1) request and subsequent negotiations, the current ICA

1 will remain in force until replaced by a successor agreement. SBC Missouri  
2 agrees and can accept Charter's proposed language with a reasonable  
3 modification. SBC Missouri proposes that the last sentence of GT&C Section 5.6  
4 be modified to read as follows. Again, Charter's language is shown in bold  
5 underline and SBC's modification is shown in bold.

6  
7 Upon receipt of CLEC's Section 252(a)(1) request, the Parties  
8 shall commence good faith negotiations on a successor agreement,  
9 **and this Agreement shall remain in force until replaced by**  
10 **such successor agreement subject to this Section 5.**  
11

12 My hope is that SBC Missouri's proposal will resolve the issue.

13 **Q. SHOULD SBC BE ALLOWED TO REQUIRE ADDITIONAL ASSURANCE OF**  
14 **PAYMENT?**

15 A. Yes. SBC Missouri proposed language provides that additional assurance of payment  
16 *may be required*. Certainly, if the acquiring CLEC has demonstrated that it is a good  
17 credit risk, SBC would not require a deposit. However, SBC Missouri should be allowed  
18 to review the acquiring CLEC's creditworthiness and determine if an assurance of  
19 payment is warranted going forward. The deposit issue is discussed more fully below.

20 **3. [NOTICE: CLEC Coalition GT&C 14, PAGER Company GT&C 13(B)]**  
21

22 **CLEC Coalition GT&C Issue 14**

23 **Issue Statement:** *Under what circumstances must SBC provide notice of its tariff*  
24 *filings to CLEC?*  
25

26 **PAGER Company GT&C Issue 13(B)**

27 **Issue Statement:** *Should notification to CLEC of filing be required?*  
28

29 **Q. WHAT TYPE OF NOTICE OF TARIFF FILINGS SHOULD SBC MISSOURI**  
30 **PROVIDE TO THE CLECS?**

31 A. SBC Missouri should not be required to provide notice of tariff filing to the CLECs. As  
32 previously stated, SBC Missouri files its tariff in the Commission's Electronic Filing

Information System (“EFIS”). CLECs can monitor SBC Missouri’s tariff filings and may seek to suspend any tariff that SBC Missouri files. SBC Missouri should not have to bear the administrative burden and expense required to provide advance notice of its tariff filings.

**4. [DEFINITIONS: AT&T NETWORK A-C 1]**

**AT&T NETWORK A-C 1**

**Issue Statement:** *Should Attachment 11 include definitions of terms used in SBC Missouri’s proposed language?*

**Q. WHERE SHOULD DEFINITIONS BE PLACED IN THE AGREEMENT?**

A. Definitions in the agreement are essential in that the parties need to be clear that the provisions mean the same thing to both parties. The simplest, most direct way to accomplish this task is to provide definitions within the agreement. If definitions are used throughout the document and are consistently used throughout, it is more appropriate to place the definition in the GT&Cs. However, a subject-specific definition is most effective when placed in the proper attachment/appendix when it applies in direct relation to that topic. Including definitions in the document provides greater clarity and reduces the number of disputes at a later date.

**5. [INSURANCE: NAVIGATOR GT&C 3, WilTel GT&C 6, CHARTER GT&C 26]**

**NAVIGATOR GT&C Issue 3**

**Issue Statement:** *Are the insurance limits requested by SBC reasonable?*

**WilTel GT&C Issue 6**

**Issue Statement:** *Are the insurance limits and requirements requested by SBC reasonable?*

**Q. WHY HAS SBC MISSOURI PROPOSED INSURANCE LANGUAGE IN MISSOURI?**

A. SBC Missouri seeks, and many parties to this proceeding have agreed to different levels of insurance pursuant to each individual CLEC’s utilization of SBC Missouri’s network.

1 For instance, SBC Missouri has agreed to lower limits of insurance requirements that are  
2 different. This is in recognition of how the CLECs interface with SBC Missouri. SBC  
3 Missouri's exposure is much different for those CLECs that collocate. There is increased  
4 potential for liability when a CLEC's employees and/or contractors have direct access to  
5 SBC Missouri facilities.

6 **Q. WHY IS INSURANCE NECESSARY?**

7 A. CLECs have unprecedented access to the public switched network which is worth billions  
8 of dollars. For example, CLECs that interconnect with SBC Missouri may have access to  
9 SBC Missouri's OSS systems, Central Offices, Network, and other associated systems.  
10 The Commission should recognize that the CLECs' operations pose a risk to SBC  
11 Missouri's systems and network, and it is not too much to require CLECs to obtain  
12 sufficient coverage to address potential risks. The parties need insurance to protect their  
13 investments in their infrastructure and network facilities including central offices and  
14 related equipment, as well as to protect their respective employees from losses resulting  
15 from potential injuries and third-party liability. Both parties to the agreement have an  
16 interest in the other remaining viable, and insurance will minimize potential risk.

17 **Q. ARE THE MINIMUM INSURANCE REQUIREMENTS PROPOSED BY SBC**  
18 **MISSOURI REASONABLE?**

19 A. Yes. The amounts proposed by SBC Missouri are the absolute minimum commercially  
20 reasonable amounts under the circumstances. SBC Missouri's proposed language was  
21 developed with an eye to the different business plans of CLECs.

1       **CHARTER GT&C Issue 26**

2       **Issue Statement:**     *What are the appropriate provisions relating to insurance*  
3                                   *coverage to be maintained by the parties under this*  
4                                   *agreement?*

5  
6       **Q.     PLEASE DESCRIBE THE ISSUE.**

7       A.     SBC Missouri proposes language that states the CLECs will purchase insurance from an  
8               insurance company with a rating of B+ or better and from an insurance company with a  
9               Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating  
10              Guide for Property and Casualty Insurance Companies.     Charter disagrees with SBC  
11              Missouri's proposed language.

12       **Q.     WHY IS SBC MISSOURI'S LANGUAGE APPROPRIATE?**

13       A.     A.M. Best Company is a widely recognized rating agency dedicated to the insurance  
14               industry.     Best's ratings indicate the financial strength of insurance companies.     Best's  
15               rating provides the information needed to make sound, informed decisions that the  
16               insurance provider has the financial strength to handle potential claims that may arise.  
17               For example, a B+ means that the insurance company has a good ability to meet their  
18               ongoing obligations to policyholders.     Also, a Financial Size Category VII indicates that  
19               the insurance company has the sufficient financial capacity to provide the necessary  
20               policy limits to insure its risk.     This information is necessary to ensure adequate  
21               insurance coverage not only for SBC Missouri, but also the CLEC and ultimately the  
22               public switched network.

23       **6.     [REFERENCED DOCUMENTS: CLEC Coalition GT&C 18, PAGER Company GT&C 14,**  
24               **B/I GT&C SECTION 1.7(A), CHARTER GT&C 21]**

25  
26       **CLEC Coalition GT&C Issue 18, PAGER Company GT&C Issue 14**

27       **Issue Statement:**     *Which parties language should be included in the agreement?*  
28

29       **Q.     SBC MISSOURI REFERENCES TECHNICAL PUBLICATIONS, CLEC**  
30               **PRACTICES, SBC MISSOURI'S PRACTICES, ETC. IN SECTION 48 OF ITS**  
31               **PROPOSED GT&Cs.     WHY ARE TECHNICAL PUBLICATIONS AND**

**PRACTICE REFERENCES APPROPRIATE, WHILE THE CLEC COALITION'S REFERENCES ARE NOT?**

A. In managing its day-to-day business operations, SBC Missouri uses a variety of external and internal technical documents and practices. As technology and related processes evolve over time, these documents are modified accordingly. As such, SBC Missouri must be able to utilize the most recent versions or editions to stay current in the industry. It is important to recognize that these are living, breathing documents, they are not cast in stone for the life of the Interconnection Agreement. SBC Missouri's language recognizes the dynamic nature of industry practices that affect its business operations.

Conversely, the CLEC's proposed language would effectively require SBC Missouri to negotiate any changes to its practices or even industry publications with numerous CLECs. For example, the CLEC Coalition proposes language requiring that any substantive change to an industry publication, technical standard, or other document incorporated into the Agreement "shall not be effective against CLEC without its express written consent." SBC Missouri does not have the time or resources to forward every proposed change to every CLEC and wait for a reply. SBC Missouri's experience with negotiating a successor to the parties' M2A agreement demonstrates that CLECs are not a universally-responsive group. To require SBC Missouri to negotiate changes to its technical documents before implementing them would effectively freeze its practices in time. This is not a desired outcome for SBC Missouri, for CLECs or, most importantly, for end users. Changes are necessitated by advances in the industry and advances in technology, and SBC Missouri must be able to change its technical publications to keep pace with changes in technology. Accordingly, SBC Missouri's language should be adopted and the CLEC's language rejected.



1        **B/I GT&C SECTION 1.7(A)**

2        **Issue Statement:**    *Should CLECs language be included in the GT&C*  
3                                    *appendix?*

4  
5        **Q.        DESCRIBE THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO**  
6        **ADVANCE APPROVAL OF ANY POLICY, PROCESS, METHOD, OR**  
7        **PROCEDURE.**

8        A.        Birch/Ionex's proposed language in Section 1.7 would prohibit SBC Missouri from  
9                    making *any* change to *any* of its policies, procedures, methods, or processes without the  
10                  CLEC's written permission. The proposed language purports to require written  
11                  permission only under particular circumstances, but those circumstances are so vague as  
12                  to be meaningless and virtually limitless in application. It would also apply, for example,  
13                  to *any* policy that: "could have the effect" or is "likely to have the effect" of diminishing  
14                  the "value of any right of CLEC granted herein." It would also apply to *any* policy that  
15                  "could cause an inefficiency or expense for CLEC." In such circumstances, Birch/Ionex  
16                  propose that SBC Missouri must seek the CLEC's prior written approval before it takes  
17                  any action. Further, the CLEC would have "sole discretion" to withhold its permission.  
18                  This language would hamstring SBC Missouri, while providing Birch/Ionex with a blank  
19                  check that would allow them to run virtually all aspects of SBC Missouri's business.

20        **CHARTER GT&C Issue 21**

21        **Issue Statement:**    *Should either party be able to modify or update their reference*  
22                                    *documents with out seeking approval from the other party?*  
23

24        **Q.        SBC MISSOURI REFERENCES TECHNICAL PUBLICATIONS, CLEC**  
25        **PRACTICES, SBC MISSOURI'S PRACTICES, ETC. IN SECTION 2.3.1 OF ITS**  
26        **PROPOSED GT&C CONTRACT LANGUAGE. WHY ARE THESE**  
27        **TECHNICAL PUBLICATION/PRACTICE REFERENCES APPROPRIATE?**

1 A. In managing its day-to-day business operations, SBC Missouri uses a variety of external  
2 and internal technical documents and practices. As technology and related processes  
3 evolve over time, these documents are modified accordingly. As such, SBC Missouri  
4 must be able to utilize the most recent versions or editions to stay current in the industry.  
5 It is important to recognize that these are living, breathing documents; they are not cast in  
6 stone for the life of the Interconnection Agreement. SBC Missouri's language recognizes  
7 the dynamic nature of industry practices that affect its business operations.

8 Conversely, Charter's proposed language would effectively require SBC Missouri to  
9 negotiate any changes to its practices, or even industry publications, with numerous  
10 CLECs. For example, Charter proposes language that prevents any change to an industry  
11 document that would: "materially reduce" the obligations of SBC without an amendment  
12 to the ICA. Charter's provision would force SBC to enter negotiations with Charter to  
13 negotiate a document that SBC has no control over. Moreover, even if the document in  
14 question is a SBC-13STATE practice, SBC does not have the time or resources to  
15 negotiate every proposed change and wait for a reply. SBC strives to meet the changing  
16 environment and provide the highest quality service and to adopt Charter's proposed  
17 language prohibiting changes to external industry documents, as well as SBC internal  
18 practices, would stagnate technology. SBC Missouri's experience with negotiating a  
19 successor to its M2A agreement demonstrates that CLECs are not a universally  
20 responsive group. To require SBC Missouri to negotiate changes to its technical  
21 documents before implementing them would effectively freeze its practices in time. This  
22 is not a desired outcome for SBC Missouri, for CLECs or, most importantly, for end  
23 users. Changes are necessitated by advances in the industry and advances in technology,

and SBC Missouri must be able to change its technical publications to keep pace with changes in technology. Accordingly, SBC Missouri's language should be adopted and Charter's language rejected.

**7. [AFFILIATES: WilTel GT&C 5, PAGER Company GT&C 6]**

**WilTel GT&C Issue 5**

**Issue Statement:** *Should CLEC and its affiliates be required to enter into ICAs with SBC that contain like terms and conditions that WilTel has with SBC in the ICA?*

**PAGER Company GT&C 6**

**Issue Statement:** *Should the CLEC be allowed to assign or transfer this agreement to an affiliate with whom SBC already has an interconnection agreement?*

**Q. WHAT IS THE DISPUTE WITH WILTEL GT&C ISSUE 5 AND PAGER COMPANY GT&C ISSUE 6?**

A. WilTel disagrees with SBC Missouri's proposed affiliate language. For the same reasons above with Charter GT&C Issue 25, the Commission should adopt SBC Missouri's language.

**8. [INDEMNIFICATION AND LIMITATION OF LIABILITY: CHARTER GT&C 40, WilTel GT&C 12, COLLO 3, NAVIGATOR GT&C 7, CLEC Coalition GT&C 6 & E911 9, MCIm Resale 5]**

**WilTel GT&C Issue 12**

**Issue Statement:** *Which party's limitations of liability language should be incorporated into this agreement?*

**NAVIGATOR GT&C Issue 7**

**Issue Statement:** *Should the CLEC be allowed to put no limits on liability for willful or intentional misconduct or should SBC be allowed to include willful and intentional misconduct as part of the liabilities?*

*Which party's limitations of liability language should be incorporated into this agreement?*

**Q. WHAT IS THE DISPUTE WITH CLECS REGARDING SBC MISSOURI'S PROPOSED INDEMNIFICATION LANGUAGE FOR A PARTY'S FAILURE TO PERFORM?**

1 A. The parties have generally agreed that each party's liability to the other for any loss  
2 arising out of the performance of the Agreement will not exceed the amount that was  
3 charged (or that would have been charged) for the affected services. The parties have  
4 also agreed that this general rule would not apply in the case of indemnity obligations  
5 "except as specifically provided" or as "otherwise expressly provided in specific  
6 appendices" to the Agreement. CLECs propose additional language, however, that would  
7 remove the liability cap in the case of:

- 8 • Causes of Action from allegations that breach of this Agreement which  
9 also constitute a violation of a statute, including the Act; or
- 10 • Willful or intentional misconduct (including gross negligence).

11 It is my understanding that the parties are already amply protected by indemnification  
12 language, performance measures, and remedies available under the dispute resolution  
13 process – and all of these provisions would be greatly weakened if the CLECs' proposals  
14 were to be accepted. The Commission should reject these proposed exceptions as  
15 unnecessary and unreasonable.

16 **CHARTER GT&C Issue 40**

17 **Issue Statement:** *Is it appropriate to replace commercially reasonable capped*  
18 *indemnification exposure with non-capped damages?*  
19

20 **Q. WHAT IS THE ISSUE?**

21 A. Since the Issue statement may not capture the full scale of the dispute, I will attempt to  
22 describe the issue here. This issue involves a couple of disagreements. First, SBC  
23 believes that indemnification should apply to the extent not prohibited by Applicable Law  
24 and not otherwise controlled by tariff. Second, if SBC's facilities are damaged by the  
25 negligence or willful act of Charter, its agents, subcontractors, or end users, SBC believes  
26 that Charter should reimburse it for damages to its facilities. SBC will then subrogate to

1 the right of recovery by SBC for the damages. Charter disagrees.

2 **Q. WHY DOES SBC MISSOURI BELIEVE THAT THE TARIFF SHOULD BE**  
3 **ADDRESSED IN THE INDEMNIFICATION CLAUSE PROVISION?**

4 A. Simply because to the extent that Charter purchases products and services from SBC's  
5 tariff, the terms and conditions of the tariff should apply. In addition, the tariff provisions  
6 have been reviewed and approved by the Commission. Therefore, Charter's deletion of  
7 the language exposes both parties to risks that the Commission has already agreed are  
8 appropriate. Charter's language would replace commercially reasonable capped  
9 indemnification exposure with non-capped damages when such unlimited damages were  
10 not factored into SBC Missouri's cost studies underlying the services and products  
11 provided under this agreement.

12 **Q. WHAT IS THE ISSUE WITH CHARTER'S SECTION 14.3?**

13 A. Charter and SBC Missouri have agreed to language in GT&C Section 14.3 that in the  
14 case of any loss alleged or claimed by an end user of either party, the party whose end  
15 user claimed the loss shall defend and indemnify the other party against any claim unless  
16 the claim or loss was caused by the gross negligence or will conduct of the indemnified  
17 party. Charter then proposed language that would render the rule moot. Charter's  
18 proposed language states that the indemnified party's liability will not be limited in "any"  
19 way to the indemnifying party. Charter's language is inappropriate and unreasonable.  
20 SBC Missouri respectively request the Commission reject Charter's unreasonable  
21 language.

22 **Q. PLEASE ADDRESS THE DISPUTE WITH CHARTER'S SECTION 14.6.**

23 A. SBC Missouri and Charter agree that Charter will reimburse SBC for damages to SBC's  
24 facilities. Charter, however, would limit reimbursement of damages to damages caused  
25 by gross negligence or willful misconduct. SBC disagrees. It is only appropriate and

reasonable that damages to SBC's facilities caused by Charter, its agents, or subcontractors be reimbursed as the result of any negligence or willful act. Furthermore, SBC believes that Charter should reimburse SBC for such damages. SBC will cooperate in prosecuting a claim against the individual causing the damages and subrogate its right of recovery for the damages to the extent of such payment. SBC's proposed language is reasonable and appropriate.

#### **CLEC Coalition GT&C Issue 6**

**Issue Statement:** *(a) Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC Missouri's cost studies underlying the UNEs and services provided under this agreement?*  
*(b) Should there be a liquidated damages section in the GT&C?*  
*(c) Should SBC Missouri's liability to CLEC exceed commercially reasonable damages available under this agreement by also including remedies beyond those allowed by applicable law by allowing more than one full recovery on a claim?*

#### **Q. WHAT IS THE DISPUTE WITH CLECS REGARDING SBC MISSOURI'S PROPOSED DAMAGE CAPS FOR A PARTY'S FAILURE TO PERFORM?**

A. As stated above, SBC Missouri and the CLECs have generally agreed that each party's liability to the other for any loss arising out of the performance of the Agreement will not exceed the amount that was charged (or that would have been charged) for the affected services. However, the CLEC Coalition proposes additional language that would remove the liability cap in the case of:

- Obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission; or
- Bill credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards (or "Performance Measurements")

It is my understanding that the first provision would exempt quality assurance

1 penalties from the cap, and the second provision would exempt remedy payments  
2 associated with performance measures. The Commission should reject these proposed  
3 exceptions as unreasonable and inappropriate. Parties are already amply protected by  
4 indemnification language, performance measures, and remedies available under the  
5 dispute resolution process – and all of these provisions would be greatly undermined if  
6 the CLECs’ proposals were accepted.

7 **Q. WHY DOES SBC MISSOURI OPPOSE THE CLECS’ LANGUAGE EXEMPTING**  
8 **REMEDY PAYMENTS FOR PERFORMANCE MEASUREMENTS FROM THE**  
9 **CAP ON INDEMNITY OBLIGATIONS?**

10 A. It is important that the cap on indemnity obligations *not* exclude remedies for  
11 performance measures. As William R. (Randy) Dysart explains in his testimony, SBC  
12 Missouri and the CLECs have agreed on a performance remedy plan that provides for the  
13 payment of liquidated damages in certain instances when SBC Missouri fails to perform  
14 in accordance with its Interconnection Agreement. The Performance Remedy Plan is a  
15 liquidated damages agreement. When parties agree to liquidated damages, each party is  
16 giving up something to gain something else. In the case of liquidated damages, the  
17 CLEC is giving up the right to seek compensatory damages on a breach-by-breach basis  
18 in exchange for a guaranteed, agreed-upon amount of damages without the necessity of  
19 proving harm. SBC Missouri is giving up the right to a case-by-case hearing, at which  
20 time it would have the opportunity to prove that the CLEC has not been harmed by an  
21 alleged breach, in exchange for a limit in the amount of exposure for damages. CLECs  
22 are asking for double recovery – the right to exclude remedies from the cap (and thus the  
23 right to prove damages in a specific case and seek recovery under the indemnity  
24 provisions) and also the right to automatic liquidated damages. SBC Missouri opposes  
25 this attempt at a double recovery by the CLECs.

1 **Q. WHY DOES SBC MISSOURI OPPOSE THE CLECS' LANGUAGE EXEMPTING**  
2 **QUALITY ASSURANCE PENALTIES FROM THE CAP ON INDEMNITY**  
3 **OBLIGATIONS?**

4 A. It would be unfair for SBC Missouri to have to pay quality assurance penalties and also  
5 pay CLECs damages for the exact same conduct. For the reasons outlined above, quality  
6 assurance payments should not be excluded from the damage cap. Since CLECs are  
7 entitled to liquidated damages without any proof of harm, SBC Missouri should not also  
8 be liable for specific damages. CLECs should not be able to recover liquidated damages  
9 without proof of harm and also recover damages when they do prove harm.

10 **Q. WHY ARE DAMAGE CAPS IMPORTANT?**

11 A. Damage caps are important to prevent a carrier from recovering more than once (i.e.,  
12 over-recovering) for a single instance of conduct. The CLECs' proposed language allows  
13 multiple recoveries (i.e., "double dipping") for the same conduct – e.g., recovery under  
14 both performance measures and through litigation. The Commission should foster an  
15 environment in which the parties profit from offering excellent service, not where the  
16 receive windfalls through expensive, acrimonious litigation. Further, the rates at which  
17 SBC Missouri currently provides services and unbundled network elements ("UNE") do  
18 not assume unlimited damages, but rather assume the existence of damage caps. The  
19 CLECs' proposed exceptions, if approved, would require an additional examination of  
20 SBC Missouri's costs to account for significant additional exposure to damages.

21 **MCIm Resale Issue 5**

22 **Issue Statement:** *Should the Commission adopt SBC's Resale liability and*  
23 *indemnity language?*

24 **CLEC Coalition E911 Issue 9**

25 **Issue Statement:** *Should SBC Missouri's liability to CLEC exceed commercially*  
26 *reasonable damages available under this agreement by also*  
27 *including remedies beyond those allowed by applicable law by*  
28 *allowing more than one full recovery on a claim?*  
29



1   **Q.   PLEASE DESCRIBE THE DISPUTE WITH REGARD TO MCI<sup>m</sup> RESALE 5.**

2   A.   MCI<sup>m</sup>'s language to address E-911 liability simply refers to the General Terms and  
3       Conditions. However, the GT&Cs are inadequate to address liability specific to E-911  
4       for resale services. MCI objects to SBC Missouri's language that provides liability and  
5       indemnification protection with respect to 911 services.

6   **Q.   PLEASE DESCRIBE THE DISPUTE WITH REGARD TO CLEC COALITION**  
7   **E911 9?**

8   A.   SBC Missouri believes that service-specific language is best contained within the  
9       relevant appendix. In this issue, the Commission must determine which party's specific  
10      E911 liability language is appropriate for the agreement – the CLEC Coalition's language  
11      in GTC Sections 7.1.3 and 7.1.4 or SBC Missouri's proposed language in E911 Sections  
12      10.1 through 10.4. For the Commission's convenience, I have melded the parties'  
13      respective language together with agreed-upon language in plain font, the CLEC  
14      Coalition's language to which SBC Missouri objects in bold underlined font, and SBC  
15      Missouri' language to which the CLEC Coalition objects in bold font.

16           10.1   **SBC MISSOURI shall not be liable to CLEC for any**  
17           **loss arising out of the provision of E911 Service or any errors,**  
18           **interruptions, defects, failures or malfunctions of E911 Service,**  
19           **including any and all equipment and data processing systems**  
20           **associated therewith.** SBC MISSOURI liability and potential  
21           damages, if any, for its gross negligence, recklessness or  
22           intentional misconduct, is not limited by any provision of this  
23           Appendix. SBC MISSOURI shall not be liable to CLEC, its  
24           End Users or its E911 calling parties or any other parties or  
25           persons for any Loss arising out of the provision of E911  
26           Service or any errors, interruptions, defects, failures or  
27           malfunctions of E911 Service, including any and all equipment  
28           and data processing systems associated therewith. Damages  
29           arising out of such interruptions, defects, failures or malfunctions  
30           of the system after SBC MISSOURI has been notified and has had  
31           reasonable time to repair, shall in no event exceed an amount  
32           equivalent to any charges made for the service affected for the

period following notice from CLEC until service is restored.<sup>4</sup>

10.2 **In the event CLEC provides E911 Service to SBC MISSOURI, CLEC shall not be liable to SBC MISSOURI, its Customers or its E911 calling parties or any other parties or persons for any loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. CLEC's liability and potential damages, if any, for its gross negligence, recklessness or intentional misconduct is not limited by any provision of this Appendix. In the event CLEC provides E911 Service to SBC MISSOURI, CLEC shall not be liable to SBC MISSOURI, its End Users Customers or its E911 calling parties or any other parties or persons for any Loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after CLEC has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from SBC MISSOURI until service is restored.**<sup>5</sup>

10.3 CLEC agrees to release, indemnify, defend and hold harmless SBC MISSOURI from any and all Loss arising out of SBC MISSOURI provision of E911 Service hereunder or out of CLEC's End Users' use of the E911 Service, whether suffered, made, instituted or asserted by CLEC, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by CLEC, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of SBC MISSOURI.

10.4 CLEC also agrees to release, indemnify, defend and hold harmless SBC MISSOURI from any and all Loss involving an allegation of the infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance,

---

<sup>4</sup> The CLEC Coalition's language is from its GTC Section 7.1.3.

<sup>5</sup> The CLEC Coalition's language is from its GTC Section 7.1.4.

1 removal, presence, condition, occasion or use of the E911  
2 Service features and the equipment associated therewith,  
3 including by not limited to the identification of the telephone  
4 number, address or name associated with the telephone used  
5 by the party or parties accessing E911 Service provided  
6 hereunder, unless the act or omission proximately causing the  
7 Loss constitutes the gross negligence, recklessness or  
8 intentional misconduct of SBC MISSOURI.

9 **Q. WHY HAS SBC MISSOURI PROPOSED ADDITIONAL LIABILITY AND**  
10 **INDEMNITY LANGUAGE FOR E911?**

11 A. SBC Missouri proposes language that limits SBC Missouri's liability in the event of  
12 damages arising from E911 service, except in the event of SBC Missouri's gross  
13 negligence, recklessness, or intentional misconduct.<sup>6</sup> The limitation of liability extends  
14 to damages suffered *both* by CLECs *and* to customers of the CLECs. The CLEC  
15 Coalition and MCIIm should not be allowed to hold SBC Missouri liable for personal  
16 injury, death, or destruction of property for system and/or equipment failures that result  
17 from the normal course of doing business.<sup>7</sup> Such damage may very well be the result of  
18 actions outside of SBC Missouri's control. For example, an independent contractor could  
19 inadvertently cut one or more E911 facilities. In the event of a major disaster, capacity in  
20 the facilities or at the emergency answering points might be inadequate to handle the  
21 volume of calls. In these circumstances, peoples' lives or property may be at stake. Such  
22 situations are unfortunate, but the MCIIm or CLEC Coalition cannot hold SBC Missouri  
23 responsible for any and all damage resulting from such events.

24 It is appropriate that SBC Missouri be held responsible only for its acts of gross  
25 negligence, recklessness, or intentional misconduct. SBC Missouri can reasonably be

---

<sup>6</sup> These provisions are reciprocal, affording the CLEC Coalition the same protection SBC Missouri requires for itself.

<sup>7</sup> The CLEC Coalition's language in Section 10.1 only limits SBC Missouri's liability with respect to claims initiated by the CLEC Coalition. It inappropriately offers no liability protection from any other party claiming harm.

1 held responsible for these types of situations. In situations beyond these, however, SBC  
2 Missouri can not exercise reasonable control. Therefore, to hold SBC Missouri liable in  
3 situations not constituting “gross negligence, recklessness and misconduct” places  
4 unquantifiable financial risks upon SBC Missouri and subjects it and its network to  
5 unreasonably large contingent liabilities. Conversely, the CLEC Coalition’s proposal  
6 would extend only to limit SBC Missouri’s liability to damages suffered by CLECs, and  
7 not to customers of CLECs. CLEC Coalition’s proposal would not limit SBC Missouri’s  
8 liability at all. But given the nature of E911 service (and the potential liabilities that may  
9 result from system failures), the contractual limitations must extend to damages suffered  
10 by CLECs and customers of CLECs.

11 SBC Missouri’s language is eminently reasonable. SBC Missouri is willing to  
12 grant the CLEC Coalition a similar and reciprocal limitation of liability in situations  
13 where the CLECs’ provide SBC Missouri with E911 Service. SBC Missouri also  
14 proposes provisions providing indemnification in circumstances where claims and losses  
15 arise from E911 service.

16 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

17 A. SBC Missouri’s proposed language limiting both parties’ liability for potential damages  
18 associated with E911 service, except in the instance of gross negligence, recklessness, or  
19 intentional misconduct, should be adopted because it is reasonable and appropriate for the  
20 agreement. The CLEC Coalition’s language that limits SBC Missouri’s liability  
21 protection to claims initiated by the CLECs is wholly inadequate and should be rejected.

22 **WiTel PHYSICAL COLLOCATION Issue 3**

23 **Issue Statement:** *Should the liability of the parties be limited by the terms of this*  
24 *Appendix?*  
25

1 **Q. PLEASE DESCRIBE THE DISPUTE WITH WiTel PHYSICAL COLLOCATION**  
2 **ISSUE 3.**

3 A. WiTel seeks to limit its liability to only those instances that are the result of  
4 willful misconduct or gross negligence. SBC disagrees.

5 **Q. WHY?**

6 A. SBC Missouri could sustain significant damage without willful misconduct or  
7 gross negligence on WiTel's part. However, WiTel could still have caused the  
8 damages and should be held liable.

9 **9. [AUDIT: MCIIm GT&C 8, CHARTER GT&C 38]**

10 **MCIIm GT&C Issue 8**

11 **Issue Statement:** *Which party's audit requirements should be included in the*  
12 *agreement?*

13  
14 **CHARTER GT&C Issue 38**

15 **Issue Statement:** (a) *Which Party's audit requirements should be included in the*  
16 *Agreement?*  
17 (b) *Which Party's aggregate value should be included in the*  
18 *agreement?*  
19 (c) *Should either Party's employees be able to perform the*  
20 *audit?*

21  
22 **Q. WHAT IS THE DISPUTE WITH REGARD TO AUDITS?**

23 A. The issue encompasses several disputes. First, SBC Missouri and MCIIm disagree with  
24 respect to the purpose for the audit. SBC believes that the audit should be for evaluating  
25 the accuracy of the audited party's billing and invoicing of the services provided under  
26 the agreement, as well as verification of compliance with any provision of the agreement  
27 that affects the accuracy of the auditing party's billing by the audited party. Second, the  
28 parties disagree concerning whether an employee of the auditing party should be allowed  
29 to conduct the audit. Third, SBC Missouri has proposed that if the audited party requests  
30 an independent auditor, the audited party will pay for one-quarter of the independent

auditor's fees. SBC Missouri has proposed that the auditing party may conduct a subsequent audit in two different circumstances. The parties agree that if an audit has found previously uncorrected errors in invoices in the audited party's favor, a subsequent audit may be conducted. The parties disagree, however, on the percentage of aggregate value that should trigger the subsequent audit. Also, SBC Missouri proposes that the a subsequent audit should be conducted if the previous audit found non-compliance by the audited party with any provision in the agreement that would affect the auditing party's billing with an aggregate value of five percent. MCIIm has proposed an aggregate value of one and one-half percent and Charter has proposed an aggregate value of ten percent. Finally, SBC Missouri has proposed language that governs situations where the audit discovers a net adjustment in the charges paid by the auditing party in an amount that is, on an annualized basis, greater than five percent (5%) of the aggregated charges for the audited services during the period covered by the audit. MCIIm disagrees with the proposed language and suggest that the language be deleted in its entirety.

**Q. WHAT IS THE PURPOSE OF AN AUDIT?**

A. SBC Missouri believes that the audit should be for the purpose of evaluating the accuracy of the audited party's billing and invoicing of services provided under the agreement, as well as the verification of compliance with any provision of the agreement that affects the accuracy of the auditing party's billing and invoicing of the services provided by the audited party. The ability to verify billing accuracy and compliance will foster good business relationships. The Commission should encourage the parties to build solid business-to-business relationships and adopt SBC Missouri's language.

**Q. SHOULD AUDITS BE LIMITED TO EVALUATING THE ACCURACY OF THE AUDITED PARTY'S BILLING AND INVOICING?**

A. No. In certain situations, SBC Missouri relies upon data and records provided by CLECs

1 to create bills it issues to the CLECs. Audit provisions are a necessary component of the  
2 agreement and ensure that the parties' ability to evaluate the accuracy of billing and  
3 invoicing, as well as compliance with any provision of the agreement that affects the  
4 accuracy of billing and invoicing of the services provided.

5 **Q. IS IT APPROPRIATE FOR AN AUDITING PARTY EMPLOYEE TO CONDUCT**  
6 **THE AUDIT?**

7 A. Yes. This dispute centers around whether the auditing party can use an employee to  
8 conduct the audit. SBC Missouri agrees that the parties should be able to use an  
9 independent auditor if they prefer. However, it is appropriate for the auditing party to use  
10 its own employees for the purpose of conducting an audit when they choose to do so.  
11 The auditing party would have to invest in detailed training of complicated terms that are  
12 unique to the telecommunications industry. For example, an SBC Missouri employee is  
13 familiar with Universal Service Order Codes (USOCs) and records. Training an auditor  
14 who does not have this industry-specific knowledge would be time consuming and costly.  
15 However, if the audited party is not comfortable with an auditing party's employee  
16 performing the audit, SBC Missouri's language provides that it may request an  
17 independent auditor. If the audited party requests an independent auditor, it is reasonable  
18 that they should pay one-quarter (1/4) of the independent auditor's fees.

19 **Q. WHAT IF THE AUDIT FINDS AN ERROR OR NONCOMPLIANCE?**

20 A. SBC Missouri believes that in the event an error is found with an aggregate value of five  
21 percent, the parties should be allowed to conduct a subsequent audit to ensure compliance  
22 with the agreement. MCIIm would establish the aggregate value at one and one-half  
23 percent (1½%). MCIIm's proposed follow-up audit threshold of one and one-half percent  
24 is unreasonably low and would result in expensive and unnecessary work by both parties.  
25 It must be noted that previous audits correct errors, so the incidence of ongoing problems

will be miniscule in those very rare occasions where they may occur at all. Additionally, Charter's proposal of ten percent is inappropriate and unreasonable. After all, if the previous error was the result of noncompliance, the auditing party should be able to perform a follow-up audit prior to the aggregate value of ten percent.

**Q. WHO SHOULD PAY FOR THE AUDIT?**

A. The parties agree that each party will be responsible for its own expenses in connection with the conduct of the audit. However, in the event that an audited party requests an independent auditor or the audit determines that a net adjustment in charges paid or payable by auditing party in an amount, on an annualized basis, of five percent (5%), the audited party should pay one-quarter (1/4) of the independent auditor's fees. It is only reasonable that if the auditing party has been incorrectly billed or provided incorrect information for which to base its bills to the audited party, the audited party should be responsible for some of the expense.

**10. [MISCELLANEOUS: NAVIGATOR GT&C 15, PAGER Company GT&C 15]**

**NAVIGATOR GT&C Issue 15, PAGER Company GT&C 15**

**Issue Statement:** *Should the agreement specify that SBC Missouri is allowed to provide services directly to end users at the request of said end users?*

**Q. DOES SBC MISSOURI'S PROPOSED LANGUAGE IN GT&C SECTION 57.4 REQUIRE SBC MISSOURI TO OFFER SERVICE TO CLEC END USER ON THE SAME WHOLESALE BASIS AS THE CLEC?**

A. No. To the extent a service is available in its retail tariffs, SBC Missouri will provide service to any end user at the rates found in its retail tariff as approved by the Commission. The CLEC's proposed language is too restrictive.

**11. [CLEC COALITION SPECIFIC ISSUES: CLEC Coalition GT&C 21]**



1 **CLEC Coalition GT&C Issue 21**

2 **Issue Statement:** *Should this successor ICA be left silent as to whether it constitutes*  
3 *a contractual novation of the predecessor contract?*

4  
5 **Q. PLEASE ADDRESS THE DISPUTE WITH REGARD TO SECTION 69 OF THE**  
6 **AGREEMENT.**

7 A. SBC Missouri's proposed language states that the agreement consisting of appendices,  
8 attachments, exhibits, schedules, and addenda is the entire agreement and supersedes the  
9 prior agreement. It is perfectly reasonable to expect the new agreement, once approved  
10 by the commission, to supersede the prior agreement.

11 **12. [CHARTER SPECIFIC ISSUES: CHARTER GT&C 22, 23, 41, 42, & 44]**

12 **Issue Statement:** *Should additional language be included in the tariff*  
13 *language? When a CLEC voluntarily agrees to language*  
14 *relating to a SBC Missouri tariff, does it thereby gain the*  
15 *right to (a) prevent SBC Missouri from modifying its*  
16 *tariffs or (b) require SBC Missouri to negotiate its tariffs*  
17 *with the CLEC?*  
18

19 **Q. WHAT IS THE DISAGREEMENT WITH REGARD TO CHARTER GT&C 22?**

20 A. The parties have agreed to language in Section 2.5.1 that to the extent a tariff provision  
21 or rates are incorporated into the agreement that "any changes to said tariff provision or  
22 rate are also automatically incorporated" into the agreement. Charter then seeks  
23 additional language that a party may not "materially reduce" its obligations by  
24 "modifying or amending any tariff." SBC Missouri disagrees with the language Charter  
25 proposes in relation to the tariffs because it could inhibit SBC's ability to seek revisions  
26 to its tariffs.

27 **Q. WHY IS SBC MISSOURI'S LANGUAGE APPROPRIATE?**

28 A. It is important to memorialize in this agreement that SBC Missouri's tariffs may change  
29 during the life of the agreement (as is SBC Missouri's right) and that any such changes  
30 will be automatically incorporated into the Agreement. SBC Missouri's tariff revision

language ensures that the Agreement will continue to encompass the full suite of resale services available to CLECs during the term of the Agreement.

**Q. IF ADOPTED, WHAT AFFECT WOULD CHARTER'S LANGUAGE HAVE ON SBC MISSOURI'S TARIFFS?**

A. Charter's proposed language would allow it to lock in a tariff rate, term, or condition via its contract language even though tariff rates, terms, and conditions frequently change. It may even be to the CLECs' disadvantage to do so because they could be locking in a higher rate and/or omitting improved terms and conditions from their agreements. SBC Missouri should not be required to maintain its tariffs for the life of the Agreement or negotiate with CLECs regarding changes to its tariff offerings.

**Q. DOES SBC MISSOURI HAVE UNILATERAL ABILITY TO CHANGE ITS TARIFFS?**

A. No. The Commission reviews and approves SBC's tariffs. As previously stated, SBC Missouri electronically files its tariffs in the Commission's EFIS system. CLECs can monitor SBC Missouri's tariff filings and can move to suspend any tariff that SBC Missouri filed. Thus, the CLECs are not harmed by SBC Missouri's language regarding tariff revisions.

**Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

A. The Commission should adopt SBC Missouri's proposed language regarding incorporated tariff provisions. In contrast, the CLECs' competing language, which would restrict SBC Missouri's ability to file tariffs in the normal conduct of its business, is inappropriate for the reasons stated above and should be rejected.

**CHARTER GT&C Issue 23**

**Issue Statement:** *Should SBC's additional language be included in the ICA?*

**Q. WHAT IS THE DISPUTE WITH REGARD TO CHARTER GT&C ISSUE 23?**

1 A. The parties have agreed to language in Section 2.10.1 that the agreements  
2 includes rates, terms and conditions that were not voluntarily negotiated by SBC-  
3 13STATE, but were instead the result of an arbitration under Section 252 of the  
4 Act. The agreed to language goes on to say that SBC has “identified *some, but*  
5 *not all*, of the Non-Voluntary Arrangements contained” (Emphasis added) in the  
6 Agreement. Charter disagrees with the italicized language shown above.

7 **Q. WHY IS SBC’S LANGUAGE REASONABLE?**

8 A. While SBC has made every effort to identify all non-voluntarily negotiated terms and  
9 conditions, it is possible that some will have been missed. SBC’s proposed language  
10 simply notes this and provides clarity. SBC’s concern is that Illinois House Bill 2900  
11 requires SBC to make available to any requesting telecommunications carrier to the  
12 extent technically feasible, the services, facilities, or interconnection agreement or  
13 arrangements that are freely negotiated with another carrier. SBC Missouri believes that  
14 the party’s agree that non-voluntary provisions should be identified, but the inadvertent  
15 failure to mark a non-voluntary provision would not require, for example, the results of  
16 an arbitration in Missouri to be ported into Illinois.

17 **CHARTER GT&C Issue 41**

18 **Issue Statement:** *Should the parties be allowed to use the party’s name in*  
19 *advertisements?*

20  
21 **Q. WHAT IS THE DISAGREEMENT WITH REGARD TO CHARTER GT&C**  
22 **ISSUE 41?**

23 A. Charter has proposed language that the parties will have the right to use the other party’s  
24 name in advertisements. SBC disagrees. SBC should not be contractually bound to a  
25 provision in a 251/252 interconnection agreement over and above what it freely  
26 negotiates or is required by law. Charter’s language is unreasonable and inappropriate.

1 **CHARTER GT&C Issue 42**

2 **Issue Statement:** *Is it appropriate that only an end user have the ability to initiate a*  
3 *challenge to a change in its LEC?*

4  
5 **Q. SHOULD A PARTY TO THE ICA BE ALLOWED TO INITIATE A**  
6 **CHALLENGE TO A CHANGE IN AN END USERS LEC?**

7 **A.** No. It is only appropriate that for an end user to initiate any change or challenge any  
8 change in its LEC. For obvious reasons, Charter's language is unreasonable and could  
9 lead to unnecessary disputes before the Commission.

10 **CHARTER GT&C Issue 44**

11 **Issue Statement:** *Is the additional language regarding connections to end users*  
12 *necessary?*

13  
14 **Q. IS LANGUAGE PROPOSED BY CHARTER FOR GT&C SECTION 35.2**  
15 **NECESSARY?**

16 **A.** No. The parties agree that each party will administer its own network to ensure  
17 acceptable service levels to all users of its network services. The parties also agree that  
18 service levels are acceptable when end users are able to establish connections with little  
19 or no delay encountered in the network. Charter has proposed a modification to the  
20 agreed language that service is acceptable when end users are able to establish  
21 connections: "including connections to End Users of the other party" with little or no  
22 delay encountered in the network. Charter's modification is not necessary since each  
23 party has agreed to administer its own network. Therefore, Charter's proposed  
24 modification should be rejected.

25 **13. [MCIm SPECIFIC ISSUES: MCIm GT&C 9]**

26  
27 **MCIm GT&C Issue 9**

28 **Issue Statement:** *Which party's intervening law clause should be included in the*  
29 *agreement?*

30  
31 **Q. PLEASE DESCRIBE THE NATURE OF THE DISPUTE REGARDING**  
32 **INTERVENING LAW.**

33 **A.** This issue relates to how the parties will incorporate into the agreement changes

1 of law that occur during the term of the agreement. While I am not an attorney,  
2 SBC Missouri's proposed language clearly defines what qualifies as a change of  
3 law event and sets forth a procedure and time frame for negotiating contract  
4 language to comply with the change of law. In general, SBC Missouri's proposed  
5 language is fair and equitable and also clearly defines the rights and  
6 responsibilities of both parties with respect to change of law events. MCI's  
7 proposed language, on the other hand, is unacceptable because it is too vague.  
8 This issue will be further addressed in SBC Missouri's legal briefs.

9 **14. [NAVIGATOR SPECIFIC ISSUES: NAVIGATOR GT&C 5, 8, & 12]**

**NAVIGATOR GT&C 5**

**Issue Statement:** *Under what timeframe may a party terminate the contract for a material breach?*

10 **Q. SHOULD A PARTY HAVE THE RIGHT TO TERMINATE THE AGREEMENT**  
11 **AND THE PROVISIONING OF SERVICES WHEN THE OTHER PARTY**  
12 **MATERIALLY BREACHES THE AGREEMENT?**

13 **A.** Yes. SBC Missouri's proposed language provides that the parties may terminate the  
14 agreement and provisioning of services if the other party materially breaches the  
15 agreement and fails to cure its non-performance within 45 days of written notice.  
16 Navigator would leave the agreement silent.

17 SBC Missouri's proposed language strikes the correct balance by  
18 preserving SBC Missouri's ability to protect itself from a CLEC's breach while  
19 also providing CLECs with notice and an opportunity to cure the breach before  
20 termination. SBC Missouri's language provides for a 45 calendar-day written  
21 notice of the breach, which is sufficient time for the party that is in breach of the  
22 Agreement to cure the material nonperformance or material breach. Either party  
23 should be able to exercise this provision at its sole discretion without seeking

1 agreement of the breaching party.

2 **NAVIGATOR GT&C Issue 8**

3 **Issue Statement:** *Should SBC's intellectual property language be included in this*  
4 *agreement?*

5  
6 **Q. WHY IS SBC MISSOURI'S INTELLECTUAL PROPERTY LANGUAGE**  
7 **APPROPRIATE?**

8 A. SBC Missouri's language ensure that the Parties understand that they are not  
9 providing a license to use either Party's patents, copyrights or other software type  
10 rights (aside from the limited license that SBC Missouri must provide in  
11 connection with certain Lawful UNEs, when those licenses are used in connection  
12 with the same terms, conditions, and restrictions of this agreement. If a CLEC  
13 intends to use the limited license in any other way, SBC Missouri does not have to  
14 provide such license.

15 **NAVIGATOR GT&C Issue 12**

16 **Issue Statement:** *Should the interconnection agreement incorporate the*  
17 *nondiscriminatory and commonly used Accessible Letter process*  
18 *as a form of communication between SBC Missouri and*  
19 *NAVIGATOR?*

20  
21 **Q. PLEASE DESCRIBE SBC MISSOURI'S APPLICATION OF THE ACCESSIBLE**  
22 **LETTER.**

23 A. SBC Missouri's Accessible Letter process is not used to: "unilaterally change, revise,  
24 supercede, amend, modify or otherwise alter the provisions" of the agreement. SBC  
25 Missouri communicates official information to CLECs via its Accessible Letter  
26 notification process. SBC Missouri's Accessible Letters provide CLECs with  
27 information about new retail telecommunications services offered for resale, deployment  
28 of new products/services, cancellation or retirement of existing products/services, and  
29 operational issues, OSS (Operational Support System) changes and updates as well as  
30 other industry information. Accessible Letters are also used as a means to provide

1 information concerning the outcome of CLEC collaboratives and/or workshops and are  
2 typically well received by the CLEC community. The Commission should adopt SBC  
3 Missouri's language which provides the CLEC community with valuable and timely  
4 information.

5 **15. [SPRINT SPECIFIC ISSUES: SPRINT GT&C 9]**

6 **SPRINT GT&C Issue 9**

7 **Issue Statement:** *Should SBC be restricted from ever marketing to end user*  
8 *customers it loses to a CLECs in order to gain back that lost*  
9 *business?*

10  
11 **Q. WHAT IS THE DISPUTE WITH REGARD TO SPRINT GT&C 9?**

12 A. Sprint proposes language that any information provided to SBC-13STATE  
13 pursuant to Section 4.8.4.2, cannot be used by SBC Missouri for any marketing  
14 and/or sales purpose whatsoever. SBC Missouri disagrees.

15 **Q. WHAT IS SBC MISSOURI'S POSITION?**

16 A. SBC Missouri is concerned that Sprint's proposed language could be construed to  
17 mean that SBC Missouri is prohibited from marketing in any manner to former  
18 end users. SBC Missouri agrees that information provided to Industry Markets by  
19 our employees in the Local Service Center ("LSC") should not be and is not  
20 shared with the retail side of SBC, but Sprint's language is absolutely  
21 inappropriate. To say that SBC can never market to former customers because a  
22 CLEC has submitted information to SBC in writing is unreasonable, especially  
23 given that every order or request from a CLEC is "written." This would  
24 effectively deprive end users of their right to choose SBC Missouri as their  
25 service provider. Sprint's proposal is nothing more than an attempt to deprive  
26 SBC Missouri of its statutory right to offer special promotions on any of its  
27 telecommunications services to former customers. As the Commission is aware,

1 Section 392.200.11, RSMo. provides: “Notwithstanding any other provision of  
2 this section, every telecommunications company is authorized to offer discounted  
3 rates or other special promotions on any of its telecommunications services to any  
4 new and/or former customers.” For all of these reasons, the Commission should  
5 reject Sprint’s proposed language.

6 **16. [PAGER Company SPECIFIC ISSUES: PAGER Company GT&C 12]**

7  
8 **PAGER Company GT&C Issue 12**

9 **Issue Statement:** *(A) Must either party obtain end user authorization prior to*  
10 *requesting a change in the end user’s provider of local*  
11 *exchange service?*  
12 *(B) Is SBC entitled to reclaim facilities abandoned by*  
13 *CLEC’s customers when a disconnection has not yet*  
14 *occurred?*

15  
16 **Q. PLEASE DESCRIBE THE ISSUE.**

17 A. Since the competing language is shown in normal font in the DPL, it appears that  
18 the parties agree that when an end user changes or withdraws authorization, each  
19 party will release customer specific facilities belonging to the ILEC in accordance  
20 with the end user’s direction, or the directions of the end user’s agent. However,  
21 the parties disagree about what happens when the end user abandons the premise.  
22 Pager rejects SBC Missouri’s proposed language that would allow it to reclaim  
23 the facilities used to serve the end user.

24 **Q. WHAT IS SBC MISSOURI’S POSITION?**

25 A. When an end user abandons a residence or business without disconnecting its  
26 phone service, SBC Missouri should be able to reclaim those facilities for another  
27 end user. Reclamation of facilities is critical to the efficient operation of SBC  
28 Missouri’s network, and it is particularly critical given SBC Missouri’s carrier of



last resort obligations. However, in an attempt to resolve this issue, SBC Missouri proposes the following language.

When an end user authorizes a change in his selection of local service provider or discontinues service, each party shall release the customer specific facilities. SBC shall be free to connect the end user to any local service provider based upon the local service provider's request and assurance that proper end user authorization has been obtained. Further, when an end user abandons a premise (i.e., vacates a premise without disconnecting service), SBC is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities per the local service provider's request. When a CLEC resale end user has abandoned a premise (i.e. vacates a premise without disconnecting service), CLEC will cooperate with the new local service provider to confirm that the premise is abandoned by providing a timely response to the new local service provider.

**I. [RESALE AND RELATED ATTACHMENTS/APPENDICES: CLEC COALITION RETAIL ISSUE 7]**

**CLEC Coalition RETAIL Issue 7**

**Issue Statement:** *Should this appendix contain specific provisions regarding payments and terms?*

**Q. HAS THIS ISSUE BEEN RESOLVED?**

A. Yes, SBC Missouri accepts the CLEC Coalition's proposed language in Section 9.1 of Attachment 4.

**J. [UNBUNDLED NETWORK ELEMENTS: CLEC Coalition UNE Issue 44]**

**CLEC Coalition UNE Issue 44**

**Issue Statement:** *If an amendment to this agreement is required, should it be prepared as quickly as possible, and should SBC Missouri begin providing the element as of the date the amendment is filed with the PUC?*

**Q. WHAT IS THE DISPUTE WITH REGARD TO THE CLEC COALITION'S PROPOSED LANGUAGE IN 2.36.13?**

A. The CLEC Coalition proposes language that once an agreement has been reached on a UNE Bona Fide Request (BFR), the parties agree to prepare and file the amendment

1 “expeditiously.” In addition, the CLEC Coalition proposes that the amendment should be  
2 effective on the date it is filed. SBC disagrees.

3  
4 **Q. WHAT IS THE PROBLEM WITH THE CLEC COALITION’S LANGAUGE?**

5 A. First, the term “expeditiously” is ambiguous and could lead to disputes. SBC Missouri  
6 works with all CLECs to produce amendments as quickly as possible, but SBC Missouri  
7 should not be required to place the CLEC Coalition’s interest before other CLECs.  
8 Second, SBC Missouri does not believe it is appropriate to implement an amendment  
9 without approval by the Commission. The Commission has the authority to review and  
10 accept or reject any amendment filed. However, SBC Missouri is willing to accept a  
11 word change from “is filed” to “is approved.”

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A. Yes. However, I reserve the right to supplement my testimony at a later time.  
14